

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

GARFIELD REDD,  
Defendant

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Criminal Docket No. WDQ-07-0470  
Volume II

Baltimore, Maryland  
September 3, 2008  
12:32 PM to 5:03 PM

**The above-entitled matter continued on for jury trial  
before The Honorable William D. Quarles, Jr.**

A P P E A R A N C E S

On behalf of the Government:

George Hazel, Assistant U.S. Attorney  
Steven Hale Levin, Assistant U.S. Attorney

On behalf of the Defendant:

Franklin W. Draper, Assistant Federal Public Defender  
Malik Edwards, Assistant Federal Public Defender

Also present:

ATF Special Agent Bradley Crosby

Reported by:

Martin J. Giordano, RMR, CRR, FOCR  
U.S. Courthouse, Room 5515  
101 West Lombard Street  
Baltimore, Maryland 21201  
410-962-4504

**PROCEEDINGS OF SEPTEMBER 3, 2008**

**THE CLERK:** Please rise. The United States District Court for the District of Maryland is now in session, The Honorable William D. Quarles, Jr. presiding.

**THE COURT:** Good afternoon. Please be seated. Let me know when Mr. Redd is ready.

**THE DEFENDANT:** I'm ready.

**MR. DRAPER:** We're ready, Your Honor. Thank you.

**THE COURT:** Thank you. Counsel, if you'll turn to your most recent copy of the instructions, which you should have just received from Ms. Wright.

Government, any objections to Court's Instruction Number 1?

**MR. HAZEL:** No, Your Honor.

**THE COURT:** Defense, any objection to Court's Instruction Number 1?

**MR. DRAPER:** No, Your Honor.

**THE COURT:** Defense, any objection to Court's Instruction Number 2?

**MR. DRAPER:** No, Your Honor.

**THE COURT:** Government?

**MR. HAZEL:** No, Your Honor.

**THE COURT:** Defense, Court's Number 3?

**MR. DRAPER:** No, sir.

**THE COURT:** Government?

1           **MR. HAZEL:** No, Your Honor.

2           **THE COURT:** Government, 4?

3           **MR. HAZEL:** No, Your Honor.

4           **THE COURT:** Defense, 4?

5           **MR. DRAPER:** No. No, Your Honor.

6           **THE COURT:** Government, 5?

7           **MR. HAZEL:** No, Your Honor.

8           **THE COURT:** Defense, 5?

9           **MR. DRAPER:** No, sir.

10          **THE COURT:** Defense, 6?

11          **MR. DRAPER:** No objection.

12          **THE COURT:** Government, 6?

13          **MR. HAZEL:** None from the Government.

14          **THE COURT:** Government, 7?

15          **MR. HAZEL:** None, Your Honor.

16          **THE COURT:** Defense, 7?

17          **MR. DRAPER:** No objection.

18          **THE COURT:** Defense, 8?

19          **MR. DRAPER:** No objection, Your Honor.

20          **THE COURT:** Government?

21          **MR. HAZEL:** No, Your Honor.

22          **THE COURT:** Government, 9?

23          **MR. HAZEL:** No, Your Honor.

24          **THE COURT:** Defense?

25          **MR. DRAPER:** No objection.

1           **THE COURT:** Defense, 10? You will inform me which  
2 of these instructions will apply. The one is the failure to  
3 testify. The other is if the Defendant does testify.

4           **MR. DRAPER:** And, as I understand, this is one of  
5 the instructions that was revised from the prior set that we  
6 had.

7           **THE COURT:** Yes.

8           **MR. DRAPER:** Mr. Redd and I talked more this morning  
9 about his testifying. He was reserving his decision because  
10 there was some unclearness of what he could be impeached with  
11 of his prior record.

12           **THE COURT:** Okay.

13           **MR. DRAPER:** I think the Government may have found  
14 another conviction that they may allege also.

15           **THE COURT:** I'll let you reserve on this, then,  
16 until we resolve the impeachment.

17           **MR. DRAPER:** Thank you.

18           **THE COURT:** Anyway, as I said, we'll come back to  
19 that. Number 11, Government?

20           **MR. HAZEL:** No objection.

21           **THE COURT:** Defense?

22           **MR. DRAPER:** No objection, Your Honor.

23           **THE COURT:** Number 12, Defense?

24           **MR. DRAPER:** No objection.

25           **THE COURT:** Government?

1 MR. HAZEL: None, Your Honor.

2 THE COURT: Number 13, Government?

3 MR. HAZEL: None, Your Honor.

4 THE COURT: Defense?

5 MR. DRAPER: No objection, Your Honor.

6 THE COURT: Fourteen, Defense?

7 MR. DRAPER: No objection.

8 THE COURT: Government?

9 MR. HAZEL: No, Your Honor.

10 THE COURT: Fifteen, Government?

11 MR. HAZEL: No, Your Honor.

12 THE COURT: Defense?

13 MR. DRAPER: No objection.

14 THE COURT: Sixteen, Defense?

15 MR. DRAPER: No objection.

16 THE COURT: Government?

17 MR. HAZEL: None from the Government.

18 THE COURT: Seventeen, Government?

19 MR. HAZEL: None from the Government.

20 THE COURT: Defense?

21 MR. DRAPER: Your Honor, the Defense does object to

22 the --

23 THE COURT: Congressional intent?

24 MR. DRAPER: Yes, Your Honor.

25 THE COURT: Okay. You have your objection.

1                   Twenty -- let's see. For some reason, my next  
2                   number is 21. Number 18, Defense?

3                   **MR. DRAPER:** No objection.

4                   **THE COURT:** Government?

5                   **MR. HAZEL:** None, Your Honor.

6                   **THE COURT:** Number 19, Government?

7                   **MR. HAZEL:** None, Your Honor.

8                   **THE COURT:** Defense?

9                   **MR. DRAPER:** No objection.

10                  **THE COURT:** Number 20, Defense?

11                  **MR. DRAPER:** No objection, Your Honor.

12                  **THE COURT:** Government?

13                  **MR. HAZEL:** None, Your Honor.

14                  **THE COURT:** Twenty-one, Government?

15                  **MR. HAZEL:** None, Your Honor.

16                  **THE COURT:** Defense?

17                  **MR. DRAPER:** No objection.

18                  **THE COURT:** Twenty-two, Defense?

19                  **MR. DRAPER:** We do object to that instruction, and  
20                  would request the instruction submitted to the Court as to  
21                  punishment that was included, I believe, in our proposed  
22                  instructions.

23                  **THE COURT:** Okay. Government, any objection to 22?

24                  **MR. HAZEL:** I have no objection to the Court's 22,  
25                  no.

1           **THE COURT:** Defense objection is overruled.

2           Final instruction, Government?

3           **MR. HAZEL:** No objection.

4           **THE COURT:** Defense?

5           **MR. DRAPER:** No objection, Your Honor.

6           **THE COURT:** Okay. Now, is there anything that  
7 either the Government or the Defense asked for that I didn't  
8 give that you can't live without?

9           **MR. DRAPER:** As to the Defense, Your Honor, on the  
10 punishment instruction, we would have requested instead  
11 Defendant's requested Jury Instruction Number 6 on mandatory  
12 minimum sentences. As to other requested jury instructions  
13 that have been filed electronically, we would additionally  
14 request Instruction Number 9, which deals with the number --

15           **THE COURT:** Is your client subject to a mandatory  
16 minimum?

17           **MR. DRAPER:** According to a pre plea report  
18 generated by Probation, they have found him to be an armed  
19 career criminal. The requested Jury Instruction Number 9  
20 deals with the number --

21           **THE COURT:** Please read it to me.

22           **MR. DRAPER:** Number 9 states, "The fact that one  
23 party called more witnesses and introduced more evidence than  
24 the other does not mean that you should necessarily find the  
25 facts in favor of the side offering the most witnesses. By

1 the same token, you do not have to accept the testimony of any  
2 witness --"

3 **THE COURT:** Pass that up, if you would.

4 **MR. DRAPER:** Yes, Your Honor.

5 **THE COURT:** I usually include that.

6 **MR. DRAPER:** It's Number 9.

7 **MR. HAZEL:** Okay. Yes.

8 (Document tendered to the Court.)

9 **THE COURT:** Thank you. I will include that, and I  
10 will include that just before witness credibility, Number 9.

11 **MR. DRAPER:** Thank you, Your Honor.

12 **THE COURT:** Okay. Anything else you want that was  
13 not included?

14 **MR. DRAPER:** The requested Jury Instruction  
15 Number 11 is, for the record, a reasonable doubt instruction.  
16 I'm quite familiar with case law on point, but, to preserve  
17 the record, we made that request.

18 **THE COURT:** You thought you'd tempt me into  
19 reversible error just for the heck of it?

20 **MR. DRAPER:** Then, additionally, the last requested  
21 instruction would be Number 15.

22 **THE COURT:** What is it?

23 **MR. DRAPER:** Mere presence in general.

24 **THE COURT:** Give me your mere presence instruction.  
25 Pass it up.



1 (Document tendered to the Court.)

2 **THE COURT:** Any objection to the mere presence  
3 instruction from the Government?

4 **MR. HAZEL:** No, Your Honor.

5 **THE COURT:** I will include mere presence before  
6 punishment, after 21, before punishment.

7 Anything further from the Defense?

8 **MR. DRAPER:** Not on instructions, Your Honor.

9 **THE COURT:** Government?

10 **MR. HAZEL:** Nothing further on instructions, Your  
11 Honor.

12 **THE COURT:** Okay. Any objection to the verdict  
13 form, Defense?

14 **MR. DRAPER:** Was that the Government's proposed  
15 form?

16 **THE COURT:** No. Our proposed form.

17 **MR. HAZEL:** I don't think I saw that, Your Honor.

18 **MR. DRAPER:** I don't know that we've seen that.

19 **THE COURT:** Okay.

20 (Document tendered to Mr. Hazel.)

21 **MR. HAZEL:** Thank you.

22 (Document tendered to Mr. Draper.)

23 **MR. DRAPER:** Thank you. This is the form that goes  
24 to the jury. The Defense has no objection to the form.

25 **MR. HAZEL:** No objection, Your Honor.

1           **THE COURT:** Very good. Okay. Government, you have,  
2 I understand, another impeachable, and also you were going to  
3 give me some information about the release date for the March  
4 '97 Assault I.

5           **MR. HAZEL:** Your Honor, it actually was a March  
6 1999 --

7           **THE COURT:** '99 Assault I?

8           **MR. HAZEL:** -- Assault I.

9           **THE COURT:** Okay.

10           **MR. HAZEL:** And he pled guilty in October 2000. He  
11 was released from Division of Corrections' custody on January  
12 21st, 2005.

13           **THE COURT:** Okay. So it's timely?

14           **MR. HAZEL:** Yes, it is.

15           **THE COURT:** Okay. Again, the conviction date is?

16           **MR. HAZEL:** The conviction date is October 27th,  
17 2000.

18           **THE COURT:** 10/27/2000, which of course puts it  
19 within the ten-year window, and the release date was?

20           **MR. HAZEL:** He was released from DOC custody on  
21 January 21st, 2005.

22           **THE COURT:** 1/21/05, and this is Assault I, and then  
23 I will indicate that I will permit the Government to impeach  
24 with it. My understanding is that the Government had  
25 discovered another conviction.

1           **MR. HAZEL:** Your Honor, there was another one I had  
2           some question about.

3           **THE COURT:** What is it?

4           **MR. HAZEL:** It's from November 7th, 1996. The  
5           conviction date is May 12th, 1998.

6           **THE COURT:** What's the charge?

7           **MR. HAZEL:** It's also assault first-degree.

8           **THE COURT:** Okay. The conviction date is?

9           **MR. HAZEL:** The conviction date is May 12, 1998.

10          **THE COURT:** 5/12/98. Do you have a release date?

11          **MR. HAZEL:** My understanding is that he's actually  
12          currently serving that sentence as part of a probation  
13          violation. I was not able to obtain or at least I don't have  
14          in front of me now the date that he was initially released,  
15          but he is currently in custody for that charge, having  
16          violated his probation.

17          **THE COURT:** Okay. Do you wish to be heard,  
18          Mr. Draper?

19          **MR. DRAPER:** Not on that. I do wish to be heard on  
20          the first conviction, however.

21          **THE COURT:** Yes, sir?

22          **MR. DRAPER:** The assault first, our objection would  
23          be as to how the Government is allowed to describe that  
24          assault first. The presentence report we have describes it as  
25          assault first, slash, DOC employee, et cetera, which may or

1 may not be different, and, if the Government is referring to  
2 it as an assault in the first degree on a DOC employee --

3 **THE COURT:** You want to avoid the Department of  
4 Correction inference that he was in prison while it was going  
5 on?

6 **MR. DRAPER:** That's correct, Your Honor.

7 **THE COURT:** Will the Government have any problem  
8 with just referring to it as a first-degree assault?

9 **MR. HAZEL:** No problem with that at all.

10 **THE COURT:** Leaving it at that? Okay. The  
11 Government will refer to it only as a first-degree assault  
12 without reference to DOC personnel, Mr. Draper.

13 **MR. DRAPER:** Thank you, Your Honor.

14 **THE COURT:** Okay. Anything further, then, from the  
15 Government by way of impeachables?

16 **MR. HAZEL:** That's all we would intend to impeach  
17 with, Your Honor.

18 **THE COURT:** Okay. As I said, I find that the  
19 probative value of these two convictions does outweigh the  
20 prejudicial effect. I do that noting, again, the  
21 dissimilarity of the charge he's facing and the two  
22 convictions, and also believing the prejudice to be diminished  
23 by his stipulation to a qualifying conviction. Accordingly, I  
24 will permit the Government to impeach with the October 27,  
25 2000 conviction for assault first-degree, and with the May 12,

1 1998 conviction of assault first-degree, which I understand he  
2 is currently serving a sentence for.

3 Do you have your witnesses here, Mr. Draper --

4 **MR. DRAPER:** Yes, I do.

5 **THE COURT:** -- apart from the Defendant? How long  
6 do you think you'll be with them on direct?

7 **MR. DRAPER:** Ten minutes.

8 **THE COURT:** Okay. Ten each, about?

9 **MR. DRAPER:** And I only anticipate one witness at  
10 this time.

11 **THE COURT:** Okay. And I will then ask you whether  
12 you have any additional evidence. If you say, "No," that will  
13 inform me that your client will not be testifying. If he does  
14 not testify, do you want the instruction on his failure to  
15 testify?

16 **MR. DRAPER:** I believe I do, but if I may have a few  
17 minutes before the jury comes in, because one of the questions  
18 Mr. Redd asked me in lockup was what the Court would instruct  
19 the jury.

20 **THE COURT:** Okay. Well, you have the instruction in  
21 front of you.

22 **MR. DRAPER:** I was going to have him read that  
23 during the break so he'd understand.

24 **THE COURT:** Okay. Very good. We are in recess  
25 until 1:00 unless anybody has anything else.

1           **MR. HAZEL:** Your Honor, I guess just because I've  
2           never been in trial before Your Honor, I was curious as to  
3           whether you instruct before or after closings.

4           **THE COURT:** I instruct after the closings.

5           **MR. HAZEL:** Very well.

6           **MR. DRAPER:** Thank you, Your Honor.

7           **THE COURT:** For one thing, that gives my clerk time  
8           to make the changes while you're arguing.

9           **MR. HAZEL:** Sure.

10          **THE COURT:** So I instruct afterwards.

11          **MR. HAZEL:** Thank you.

12          **THE COURT:** Anything else, folks?

13          **MR. DRAPER:** No, Your Honor.

14          **THE COURT:** Thank you.

15          **THE CLERK:** Please rise. This Honorable Court  
16          stands in recess until 1 o'clock.

17                   (Recess taken, 12:46 p.m. - 1:00 p.m.)

18          **THE CLERK:** Please rise. This Honorable Court  
19          resumes in session.

20          **THE COURT:** Ready for the jury, folks?

21          **MR. DRAPER:** Yes, Your Honor.

22          **THE COURT:** Ron? I don't know why I'm always  
23          surprised to see him, your witness.

24                   (Jury enters.)

25          **THE COURT:** Good afternoon. Please be seated.

1 Members of the jury, the Government has rested its case. We  
2 will now hear from the Defense. Mr. Draper?

3 **MR. DRAPER:** May it please the Court. The Defense  
4 calls Joseph Segreti.

5 **JOSEPH SEGRETI**

6 **WAS THEN DULY SWORN TO TELL THE TRUTH**

7 **DIRECT EXAMINATION**

8 **BY MR. DRAPER:**

9 Q. Mr. Segreti, where are you employed?

10 A. I work for the Office of the Federal Public Defender.

11 Q. And so how are you employed by the Office of the Federal  
12 Defender? What's your position?

13 A. I'm the chief investigator.

14 Q. How long have you worked with the Federal Public  
15 Defender's Office?

16 A. Since July of 1984.

17 Q. And, prior to working for the Federal Defender's Office,  
18 did you have any other investigative experience?

19 A. Yes. I was a member of the Baltimore City Police  
20 Department for ten years.

21 Q. And what were your duties with the Baltimore City Police  
22 Department?

23 A. For the first five years, I was assigned to the Eastern  
24 District. The last five years, I was a member of the Homicide  
25 Unit.

1 Q. Now, Mr. Segreti, are you familiar with the case of  
2 *United States versus Garfield Redd*?

3 A. Yes, I am.

4 Q. And have you done any investigation on this case?

5 A. Yes, I did.

6 Q. And, during your investigation, did you come across a  
7 Nissan Altima?

8 A. Yes.

9 Q. I'm going to hand to you what's been marked as  
10 Defendant's Exhibit Number 6 and ask you if you recognize  
11 that.

12 (Witness perusing document.)

13 A. It's a printout supplied by the Motor Vehicle  
14 Administration.

15 Q. And what is on that printout, or what is it a printout  
16 of?

17 A. It's essentially application for certificate of title to  
18 an automobile.

19 Q. Now, what automobile is it an application for?

20 A. A 2001 Nissan Altima.

21 Q. Does it indicate who applied or who purchased the Nissan  
22 Altima?

23 A. Yes. John Alan Hargrave, Jr.

24 Q. And does it list when Mr. Hargrave actually purchased the  
25 Nissan Altima?



1 A. I think it said 2000. I'm not seeing it right -- it's  
2 not jumping right out at me.

3 Q. Directing your attention perhaps to the bottom of the  
4 page.

5 A. 27th of October 2000.

6 Q. Thank you. And also on that document, does it indicate  
7 where Mr. Hargrave lives?

8 A. Yes.

9 Q. And where was that?

10 A. 541 Gold Street, Baltimore, Maryland.

11 Q. Thank you.

12 **MR. DRAPER:** Your Honor, at this time, the Defense  
13 would move Defendant's Exhibit Number 6 into evidence.

14 **THE COURT:** Without objection, Defense 6 is  
15 admitted.

16 **BY MR. DRAPER:**

17 Q. Now, Mr. Segreti, did you have the opportunity to go to  
18 541 Gold Street?

19 A. Yes.

20 Q. And, referring to the monitor there, there is Defendant's  
21 Exhibit Number 2. Do you recognize this photograph?

22 A. Yes, I do.

23 Q. And what does that photograph portray?

24 A. That's a photograph of the front of 5 -- the 500 Block of  
25 Gold Street. It's the south side of the street.

1 Q. Am I pointing at the correct address?

2 A. That's correct.

3 Q. Now, during your investigation of the case, did you come  
4 to speak with Mr. Hargrave?

5 A. Yes, I did.

6 Q. And did you learn that the police had interviewed  
7 Mr. Hargrave?

8 A. Yes, I did.

9 Q. Specifically, the police had asked him about a gun?

10 MR. HAZEL: Objection.

11 THE COURT: What's the basis?

12 MR. HAZEL: Hearsay.

13 THE COURT: Overruled.

14 BY MR. DRAPER:

15 Q. That the police had asked him about a handgun?

16 A. Yes.

17 Q. And what, if anything, did you learn from your interview  
18 of Mr. Hargrave?

19 A. Well, I asked Mr. --

20 MR. HAZEL: Objection.

21 THE COURT: Sustained.

22 BY MR. DRAPER:

23 Q. Did you learn when it was that police had been to  
24 interview Mr. Hargrave?

25 A. The night of the incident.

1 Q. "The incident" referring to which incident?

2 A. The arrest of Mr. Redd.

3 Q. And did you learn whether or not a handgun was, in fact,  
4 owned by Mr. Hargrave?

5 MR. HAZEL: Objection.

6 THE COURT: Sustained.

7 BY MR. DRAPER:

8 Q. Do you know whether or not Mr. Hargrave was surprised the  
9 police had found a handgun under his car?

10 MR. HAZEL: Objection.

11 THE COURT: Sustained.

12 BY MR. DRAPER:

13 Q. Mr. Segreti, did you make any attempts to serve  
14 Mr. Hargrave with a subpoena?

15 A. Yes.

16 Q. And what was the result of that effort?

17 A. It appeared to me yesterday that there had not been any  
18 activity at the house, meaning I left my card there. The  
19 paper had been delivered. I was told --

20 MR. HAZEL: Objection.

21 THE COURT: Sustained.

22 BY MR. DRAPER:

23 Q. Did you make any efforts today as well?

24 A. Yes, I did.

25 Q. And have you learned subsequently that Mr. Hargrave was

1 not available?

2 A. That's correct.

3 **MR. DRAPER:** I beg the Court's indulgence.

4 Q. Mr. Segreti, in your experience as an investigator, are  
5 you familiar with Gold Street and Gold Street and Pennsylvania  
6 Avenue?

7 A. Yes, I am.

8 Q. And how would you describe, in your experience as an  
9 investigator, that area?

10 A. How would I describe it?

11 Q. Yes, sir.

12 A. It's a commercial strip. The intersection of  
13 Reisterstown Road and Gold, it's a commercial strip. It's  
14 very heavily populated, and it has high crime.

15 Q. And, when you say "high crime," what type of crime  
16 activity would you expect?

17 A. In my experience, it -- in the police department and  
18 in -- with the Office of the Federal Defender, there --  
19 anything from assaults to gun cases. Serious assaults.

20 Q. And have you ever had the opportunity to also investigate  
21 drug cases?

22 A. Yes.

23 Q. Does this area or are you aware whether or not there is  
24 or has been drug activity in this area?

25 A. There is a significant amount of drug activity in that

1 area.

2 Q. And, in your experience as an investigator, both for the  
3 Baltimore City Police Department as well as the Federal Public  
4 Defender's Office, are you familiar with the practices of drug  
5 dealers?

6 A. Somewhat.

7 Q. Somewhat? And are you familiar with the concept of a  
8 stash?

9 A. Yes.

10 Q. If you'd please tell the ladies and gentlemen of the jury  
11 what a stash is.

12 A. Stashes could be either drugs or guns. It's kept not  
13 close to the person particularly doing the dealing, but he has  
14 access to it, or someone close to him, someone familiar with  
15 him would have access to it.

16 Q. And you say in both a gun and drugs?

17 A. Yes.

18 Q. Well, where would someone stash guns -- a gun or drugs?

19 A. It could be anywhere in the immediate vicinity of where  
20 the persons are congregating. Sometimes it's in the  
21 backyards. Sometimes it's on or about a motor vehicle. A lot  
22 of times those are the only things that are around that, so  
23 they make a convenient place to put things.

24 **MR. DRAPER:** Thank you, Mr. Segreti. I don't have  
25 any additional questions, Your Honor.

1           **THE COURT:** Cross?

2           **MR. DRAPER:** Please answer any questions the  
3 Government may have.

4           **MR. HAZEL:** No questions, Your Honor.

5           **THE COURT:** Thank you. You may step down, sir.

6           **THE WITNESS:** Thank you, Your Honor.

7           (Witness excused.)

8           **THE COURT:** Anything further, counsel?

9           **MR. DRAPER:** The Defense rests, Your Honor.

10          **THE COURT:** Okay. Counsel, approach, please.

11          (Whereupon, the following conference was held at the  
12 bench.)

13          **THE COURT:** Defense has rested. Is Defense renewing  
14 previous motions?

15          **MR. DRAPER:** Yes, Your Honor.

16          **THE COURT:** Incorporating all additional evidence  
17 into that motion, and I assume resting on prior arguments?

18          **MR. DRAPER:** That's correct, Your Honor.

19          **THE COURT:** Government, anything to say before I,  
20 once again, deny the motion?

21          **MR. HAZEL:** No, Your Honor.

22          **THE COURT:** Motion is denied. Anything, the  
23 Government, in rebuttal?

24          **MR. HAZEL:** No, Your Honor.

25          **THE COURT:** How long will you be in opening close?

1                   **MR. HAZEL:** Fifteen minutes.

2                   **THE COURT:** Your close?

3                   **MR. DRAPER:** I'd say more like 30.

4                   **THE COURT:** Okay. Rebuttal?

5                   **MR. HAZEL:** Fifteen minutes.

6                   **THE COURT:** Anybody want a two- or five-minute  
7 warning?

8                   **MR. HAZEL:** Actually, Your Honor, can I change my  
9 first one to 20 minutes?

10                  **THE COURT:** Sure.

11                  **MR. HAZEL:** The first.

12                  **THE COURT:** Take any time you want. You're just  
13 stuck with it once you pick it.

14                  **MR. HAZEL:** That's why I bumped it up by five  
15 minutes.

16                  **THE COURT:** Two- or five-minute warning, folks?

17                  **MR. DRAPER:** He's going to be -- I'll take 35.

18                  **THE COURT:** Okay. Anybody want a warning?

19                  **MR. DRAPER:** Yes, Your Honor. I will.

20                  **THE COURT:** Two, or five?

21                  **MR. DRAPER:** Five, please.

22                  **THE COURT:** Okay.

23                  **MR. HAZEL:** Five minutes.

24                  **THE COURT:** Okay. Very good. And your rebuttal  
25 time was?

1           **MR. HAZEL:** Fifteen minutes.

2           **THE COURT:** Fifteen. Yes, sir?

3           **MR. DRAPER:** I've discussed the instructions with  
4 Mr. Redd, and we do request the instruction --

5           **THE COURT:** On failure to testify?

6           **MR. DRAPER:** Correct.

7           **THE COURT:** Thank you.

8           Would you have him finalize it with failure to  
9 testify. In other words --

10          **LAW CLERK:** Yes.

11          **THE COURT:** Thank you.

12          **MR. DRAPER:** There was one other point I noted on  
13 the instruction on law enforcement. Was that Number 15?

14          **MR. EDWARDS:** Yeah. I believe Instruction  
15 Number 15. There was language to the effect that the law  
16 enforcement officer, the fact that they're a Federal law  
17 enforcement officer and the fact that you only heard from  
18 Baltimore City Police, and include that Federal language in  
19 it --

20          **THE COURT:** Okay. So you want me to --

21          **MR. DRAPER:** We just didn't want them --

22          **THE COURT:** You want me to include Federal in this?

23          **MR. DRAPER:** Yes, Your Honor.

24          **THE COURT:** I will find it and do that.

25          **MR. DRAPER:** Thank you.



1           **THE COURT:** Okay. Step back, please.

2           (Whereupon, the bench conference was concluded.)

3           **THE COURT:** Members of the jury, we've just  
4 concluded all of the evidence in the case. The next phase  
5 will be where the lawyers tell you what they believe the  
6 evidence has proved. After that, I will give you instructions  
7 on the law. Then the case will be given to you for your  
8 decision.

9           Now, we start with the Government because, of  
10 course, the Government has the burden of proof here. The  
11 Government will take no more than 20 minutes in its first  
12 closing argument to you, and, again, give them your full time  
13 and attention. I will watch the clock for you.

14           Counsel?

15           **MR. HAZEL:** Thank you, Your Honor.

16           Good afternoon, ladies and gentlemen.

17           **JURORS:** Good afternoon.

18           **MR. HAZEL:** Officer James Glanville saw the  
19 Defendant, Garfield Redd, with a gun in his hand.  
20 Officer Glanville saw the Defendant put the gun under the back  
21 end of that car. Officer Glanville pointed out the gun to  
22 Officer Ivery. Officer Ivery then found the gun underneath  
23 the back end of the car. Ladies and gentlemen, that's what  
24 this case is about. That's what the evidence has shown, and  
25 that's what proves the Defendant's guilt, Garfield Redd,

1 beyond a reasonable doubt.

2 Now, ladies and gentlemen, I'm going to go over just  
3 a little bit of the testimony. I'm not going to go through  
4 every minute and detail of it. You just heard it yesterday,  
5 but I'm just going to give you a brief overview of some of the  
6 testimony you've heard in this case.

7 You heard Officer James Glanville take the stand,  
8 and he testified that, on October 22nd, 2006, around  
9 10:00 p.m., he was in a car with three other police officers,  
10 that they turned onto the 500 Block of Gold Street, multiple  
11 pictures of which are depicted on the board up there. It was  
12 his recollection that the car stopped sort of midway down the  
13 block. It was Officer Glanville's recollection that  
14 Officer Vargas, who was one of the people who was with him,  
15 came out and walked down to this area, and I'm referring to  
16 Government's Exhibit Number 2, that he came and walked down to  
17 this area where he talked to some people; that Officers Suiter  
18 and Ivery walked further down here to this area, and that he  
19 was sort of in between where those two were.

20 Officer Glanville then testified that he saw the  
21 Defendant, Mr. Garfield Redd, sitting on these steps depicted  
22 in both of these pictures, that he at that time was standing  
23 out in the street. He said there was about 10 to 15 steps  
24 from where he was standing, about 10 to 15 steps from where he  
25 saw the Defendant, Mr. Redd, and that he saw the Defendant

1 with a gun in his hand.

2 Now, keep in mind the Defendant has been sitting  
3 there. He's sitting on those steps. The police officers have  
4 pulled up. The police officers, who are in uniform, have  
5 gotten out of the car. Some have walked in different  
6 directions. Mr. Redd, now seeing police officers on the  
7 street, has a gun in his hand, so what's he going to do? He's  
8 got to get out of there. He's got to get out of there. He's  
9 got to find somewhere, some way to get rid of that gun. So he  
10 starts to run. Seeing Officer Glanville, he can't run  
11 directly into Officer Glanville, but he thinks, lucky for him,  
12 there is a car there. So, as Officer Glanville said, he sees  
13 him with his gun in his hand, dip down and toss the gun, and  
14 then he takes off and tries to walk in a different direction  
15 from Officer Glanville.

16 Officer Glanville, as the Defendant is walking away,  
17 draws his weapon, and he's pointing the weapon at him and  
18 commanding him over and over again to get on the ground.  
19 Eventually, the Defendant got on the ground. He eventually  
20 complied. Officer Ivery told you that, after the Defendant  
21 had been placed in cuffs and was sitting up, upon seeing that  
22 a gun has now been recovered, he's caught, suddenly he starts  
23 passing out, start, you know, sort of -- he doesn't know where  
24 he is, he's passing out, he's in and out of consciousness.  
25 Officers wanted to make sure he was okay. They called an

1 ambulance, called a medic, gave him a little smelling salts.  
2 Suddenly, he's just fine. He suddenly has nothing wrong with  
3 him.

4 Now, you've heard from two other officers, and I'm  
5 not going to walk you through all of what each of them said.  
6 Suffice us to say that there are points on which  
7 Officer Glanville and Officer Suiter and Officer Ivery  
8 remembered things a little differently in terms of things like  
9 where the car was placed and who got out where. I suspect  
10 that you're going to hear some more about that, and there is  
11 no getting around that, but, on the key points of what  
12 happened out there that night and what Officer Glanville saw  
13 that night, Officer Suiter and Officer Ivery corroborate that.

14 Officer Suiter told you that he had gone further  
15 down the street by where the grassy area is, and that he could  
16 hear Glanville giving him instructions, giving the Defendant  
17 instructions. Couldn't hear exactly what they were, but he  
18 could hear something. He could hear him sort of yelling out  
19 instructions to the Defendant, and so he turns and begins to  
20 go in that direction, and what does he see? He says he  
21 conceded he couldn't see what was in his hand because it was  
22 dark and, from his angle, he couldn't see, but he saw the same  
23 motion that Officer Glanville described.

24 Officer Ivery told you that, by the time he heard  
25 Officer Glanville screaming or shouting instructions to the

1 Defendant and he walked down in that direction, the Defendant  
2 by that point was already on the ground and that  
3 Officer Glanville was holding him at gunpoint and that, when  
4 he got there, Officer Glanville said, "He dropped the gun  
5 under the car;" not, "Officer Ivery, check and see what's  
6 under the car;" not, "I think there is something under the  
7 car." He said, just seconds after having seen him drop the  
8 gun, "He dropped the gun under the car."

9 What does Officer Ivery do? Of course he turns, and  
10 he said he didn't even have to look far. He turned to his  
11 left because he was in the street and the car was parked to  
12 the left of him, and he could see underneath the rear of the  
13 car. Just where Officer Glanville had seen the Defendant put  
14 the gun, he finds the gun. Officer Glanville saw the gun in  
15 his hand, saw him put the gun down, showed Officer Ivery where  
16 it was. Officer Ivery found it just where the Defendant  
17 dropped it.

18 That's the evidence in this case, ladies and  
19 gentlemen. I just want to talk to you very briefly about the  
20 law in this case. As I told you in the beginning of the case,  
21 there is just one charge. The Defendant is charged with  
22 possession of a firearm by a prohibited person, and, as I said  
23 then at the beginning, just yesterday about this time, there  
24 are just three elements. The first is that the Defendant was  
25 convicted in any court of a crime punishable by imprisonment

1 for a term exceeding one year and that the State has not  
2 restored the Defendant's civil rights following that  
3 conviction. You don't have to spend any time on that. As has  
4 been explained to you, the Defense and the Government have  
5 stipulated to that fact. So, when you go back there, you  
6 check that element off.

7 The second element of this crime is that the  
8 Defendant knowingly possessed the firearm. Officer Glanville  
9 saw the gun in his hand -- actual possession.

10 The other thing we have to prove in terms of that  
11 element is that what we found here is actually a firearm.  
12 That's part of the offense, that that was actually recovered,  
13 actually seen in his hand, that it actually is a firearm,  
14 could project a bullet by explosion. You heard from a firearm  
15 examiner, who was declared as an expert, told you that he took  
16 this gun and he placed his initials in it after he finished  
17 with it, that he test fired the gun, that it could, in fact,  
18 project a bullet, that it did, in fact, meet the definition of  
19 a firearm. That's Element 2. He possessed the gun, and it  
20 was, in fact, a firearm. Check off the second element.

21 The third element, ladies and gentlemen, is that he  
22 possessed a firearm that was in or affecting interstate  
23 commerce. To prove that, the Government must show that, at  
24 some point prior to Defendant's possession, the firearm  
25 traveled in interstate commerce. It's sufficient for this

1 element to show -- and you'll hear the Court will give you the  
2 instructions, but it's sufficient to show that the firearm  
3 crossed a state line prior to coming into the possession of  
4 the Defendant.

5 The firearm examiner also, in addition to telling  
6 you that it was, in fact, a firearm, told you that it's a  
7 Hi-Point firearm, and that Hi-Point firearms aren't  
8 manufactured in the state of Maryland; they're manufactured in  
9 the state of Ohio. So, in order for the gun -- this is pretty  
10 common-sensical. In order for the gun to have made it from  
11 where it was manufactured in Ohio to the Defendant's hand on  
12 the 500 Block of Gold Street in Baltimore, Maryland, it would  
13 have had to travel in interstate commerce, across a state  
14 line. Check off the third element.

15 Three elements. The Government has proven each of  
16 those elements beyond a reasonable doubt. Officer Glanville  
17 saw him with the gun, saw him drop the gun. Officer Ivery  
18 recovered the gun. The Government has proven, beyond a  
19 reasonable doubt, that the Defendant is guilty of possession  
20 of a firearm by a prohibited person. Ladies and gentlemen, we  
21 ask that you return a verdict consistent with the law and  
22 evidence in this case -- a verdict of guilty.

23 Thank you.

24 **THE COURT:** Thank you, Mr. Hazel. Mr. Draper has  
25 said he's not going to take any more than 35 minutes of your

1 time, so, again, I will watch the clock for you. Please give  
2 him your full time and attention.

3 Mr. Draper?

4 **MR. DRAPER:** Thank you, Your Honor. May it please  
5 the Court.

6 Good afternoon, ladies and gentlemen of the jury.

7 **JURORS:** Good afternoon.

8 **MR. DRAPER:** Garfield Redd was the wrong person in  
9 the wrong place at the wrong time. No one else was arrested  
10 that night, so the Flex Squad, the three officers from whom  
11 you've heard -- all were former members of the Flex Squad, but  
12 no longer part of -- needed to show that they, in fact, were  
13 out suppressing crime. They got a gun. They took a picture,  
14 put their prize on their wall to show they were suppressing  
15 crime, and, unfortunately for Garfield Redd, he was the  
16 closest person to their prize. That's why Garfield Redd is  
17 here today. Not because he possessed a gun. He did not.  
18 He's here today because of one officer's misperception on a  
19 dark night on a drug-infested street in a crowd of 15 to 20  
20 people. Garfield Redd was trying to get high, not possess a  
21 firearm.

22 Now, you've heard the Government's case, and, again,  
23 the testimony is what you heard from here (pointing to the  
24 witness stand), not what you think the attorney tells you the  
25 evidence was. It's what you remember and what you actually



1 heard. Now, supposedly one of the Government's five witnesses  
2 thinks he saw Garfield Redd throw a gun. Only one. He may  
3 have thought that that's what he saw when a man emerged from  
4 the shadows, but, in fact, he is mistaken, and we submit to  
5 you the evidence does not support that that happened.

6 The Government's case as presented to you makes  
7 absolutely no sense, no common sense. The Government would  
8 have you focus upon violence in the drug-infested  
9 neighborhoods and the drugs on the street and forget about the  
10 individual people, the facts, and the problems. As to  
11 Garfield Redd, you have to judge the evidence as it applies to  
12 him, not to the problems in society, not to the problems on  
13 that street, but how the evidence applies to that man. The  
14 law doesn't allow you to infer that he is guilty merely for  
15 participating in the evening's activities of trying to get  
16 high. You may not find him guilty of possession of a firearm  
17 simply because he is a junkie. The mere fact that he may have  
18 been associating with a crowd of 15 to 20 people who are out  
19 on that street not doing anything good does not allow you to  
20 convict him of possession of a firearm.

21 You must make your decision independently as to  
22 Garfield Redd and what he did and did not do on the evening of  
23 October 22nd, 2006, and I'll ask you to please, in your  
24 deliberations, to look at all the evidence and to see the  
25 innocent missteps and miscues and mistakes, and to recognize

1 the misperceptions derived from the evidence that you heard,  
2 and to question the Government's liberal interpretations of  
3 the testimony.

4 Here is what we have: We have the tale of three  
5 officers and the missing fourth. Where is the fourth officer,  
6 Mr. Vargas? We've heard of where other people said he was on  
7 that evening. Where was he yesterday or today? The  
8 Government has the burden of proving to you guilt beyond a  
9 reasonable doubt. Where was the fourth member of the Flex  
10 Squad? Would we have heard a fourth version, a fourth tale?  
11 You've heard how the other three officers are no longer part  
12 of the Flex Squad, and you've heard the Government concede  
13 only one man allegedly saw Garfield Redd with a gun, and that  
14 was Officer Glanville.

15 Well, Officer Glanville's testimony is riddled with  
16 inconsistencies and mistakes. We submit to you misperceptions  
17 and some mistakes may seem, in isolation, to be quite  
18 innocent. Some of the questions that I asked, such as the  
19 mistake in time, a 15- to 20-minute mistake in time as to when  
20 it's documented he actually called in to dispatch after  
21 Mr. Redd is in custody to when the time he wrote the incident  
22 down on his own report -- a 15- to 20-minute discrepancy, it  
23 may not seem like much, but it's important when judging the  
24 credibility and the totality of Mr. Glanville's testimony as  
25 to how easy it is for him to make a mistake, and, if he can

1 easily make a mistake on a discrepancy in time, he may have  
2 made a mistake that night on what he perceived was happening  
3 in the shadows.

4 He corrected himself or changed his testimony and  
5 admitted as much to you that, between the morning and the  
6 afternoon, his sworn testimony changed about the distance  
7 between himself and Mr. Redd. Now, you heard him testify that  
8 he said it was 10 to 15 steps, the distance between himself  
9 and Mr. Redd, but, on cross-examination, he admitted that  
10 earlier, outside of your presence, he had testified that he  
11 was a mere five steps from Mr. Redd, but that was a mistake,  
12 and so now it was 10 to 15 steps from Mr. Redd. Again, these  
13 mistakes in Officer Glanville's memory and testimony are  
14 important to determine the facts of this case.

15 Now, let me use a black marker to describe much of  
16 what Officer Glanville told you. If you look on your  
17 monitors, I'm referring to Defense Exhibit Number 4, and  
18 you'll have this back in the jury room where I marked, at  
19 Officer Glanville's direction, the location of people, cars,  
20 and other items that he saw. Well, one of the things that  
21 Officer Glanville told you about was he could not remember if  
22 this street light here was working. He thought this one was  
23 down on the corner, but this one, he was unsure of, and he  
24 admitted that it was poor lighting that night.

25 The one fact that everyone seems to be in agreement

1 on is that a man, allegedly Garfield Redd, was on this step  
2 when the police arrived. No other lighting source has been  
3 pointed out or are we aware of, so everyone concedes that the  
4 lighting he saw was poor. In fact, the lighting was so poor  
5 that night that Officer Glanville describes Mr. Garfield as  
6 emerging from the shadows, and two other officers either  
7 walked and/or drove past Mr. Redd on the steps without even  
8 noticing him. That's how poor the lighting was that night.

9 Officer Glanville testifies that Officers Ivery and  
10 Suiter walked past, because, according to Officer Glanville,  
11 the patrol car is somewhere here in the middle, and,  
12 therefore, Suiter and Ivery walk down to here, not noticing  
13 Mr. Redd on a step, and certainly not seeing a gun.

14 Mr. Glanville tells you that Mr. Redd did not have any gloves  
15 on. He tells you that, in a search of Mr. Redd, he does not  
16 find any bullets. He tells you that there were people  
17 scattered around the block, and, again, we've heard two  
18 versions of where the crowds were -- split crowds on each  
19 corner or one crowd right there in the middle. Regardless,  
20 think of the credibility of Mr. Glanville's story when an  
21 officer allegedly sees a firearm thrown into the street and  
22 doesn't bother to recover the firearm, but, instead, chases an  
23 unarmed man running away, leaving a firearm to be picked up by  
24 a crowd which they suspect is of drug users.

25 The only thing that Mr. Glanville found

1     incriminating on Mr. Redd was one capsule of suspected heroin.  
2     Officer Suiter testified that the crowd was from the tree down  
3     to here. Now, the other officers have told us the crowds were  
4     on the corners. Officer Suiter says the crowd was here in the  
5     middle, which would have placed the Nissan Altima owned by  
6     John Hargrave somewhere here, so the crowd that Officer Suiter  
7     saw was right by the car, where a gun was found.

8             Officer Suiter says that he also walked by the  
9     location where Mr. Redd was supposedly on the steps, but does  
10    not see him because Mr. Suiter is walking on the street.  
11    That's how poor the lighting was out there that night, and  
12    Officer Suiter says that the man that he saw walking up the  
13    street and ultimately arrested by Mr. Glanville was walking --  
14    not running, but walking up the street.

15            At most, Officer Suiter, who admittedly told you he  
16    never saw a gun in, near, or around Garfield Redd, and, at  
17    most, he saw some type of dipping motion on the part of  
18    Mr. Redd. He doesn't remember a medic. He doesn't remember  
19    any alleged pretended activity on the part of Mr. Redd, nor  
20    does he remember a medic giving him treatment, even though  
21    that's been established by other officers' testimony as well  
22    as documentation. Most importantly, Mr. Suiter never saw a  
23    gun in his hand.

24            Mr. Ivy testifies that Glanville actually got out up  
25    here with Mr. Vargas, and that he's up here on the top of the

1 street. Mr. Ivy says that the car drove all the way down  
2 here, the police car, and that they got out and went to this  
3 corner to talk to people. So Officer Ivy's even contesting  
4 where Mr. Glanville was standing. He certainly doesn't see  
5 the additional encounter between Mr. Redd and Mr. Glanville  
6 and tells you something quite different from what  
7 Mr. Glanville says of where he got out of the vehicle.

8 Officer Ivy only has his attention drawn to Garfield  
9 Redd after he hears, unsure of what he hears, but he hears  
10 Officer Glanville shouting, yelling, drawing his attention,  
11 and he sees Officer Glanville pulling his gun. He does not  
12 see Garfield Redd with a gun. He simply sees Mr. Glanville  
13 pulling his own weapon, and so Officer Ivy is the one who  
14 takes the prize picture and posts it on the wall of the Flex  
15 Squad.

16 What we do have in this case is a complete lack of  
17 forensic evidence of what they do not have. There are  
18 absolutely no fingerprints on Government 3a. No fingerprints  
19 were found, which use your own common sense, but the  
20 Government version, I submit to you, does not add up. No  
21 one's explained to you what happened to the powder that  
22 supposedly was used to dust this gun for prints, and, if the  
23 gun was picked up by the officers, why were their prints not  
24 on it, or, if he couldn't find the prints using the dust, why  
25 not use the Super Glue method, which the Baltimore City Police

1 Department commonly uses, or, if you can't find prints, why  
2 not test the gun for DNA? It was taken into evidence. It was  
3 taken to Evidence Control. Why not test this gun to see if  
4 Mr. Garfield Redd had deposited DNA on it?

5 I submit to you, had it been tested, you would not  
6 have found Garfield Redd's DNA on that gun, because he never  
7 handled it, nor did he handle Government's Exhibit 3b, the  
8 clip, nor did he handle these bullets, Government's 3c, and  
9 put them in, because, if he had, there would be DNA that would  
10 be presented to you as well as fingerprint evidence.

11 There were no bullets found upon Mr. Redd -- not in  
12 his pocket, not on his person. Mr. Faber, the firearms  
13 expert, tells you there was gunshot residue in the barrel of  
14 that gun, but no one bothered to even look at Garfield Redd's  
15 hands, clothing, or other items to see if there was gunshot  
16 residue on his person, and I submit to you, had they done that  
17 test, it would have been negative. There would not have been  
18 gunshot residue on Garfield Redd, because he never handled  
19 this gun. All he had was a capsule of suspected heroin on his  
20 person.

21 What's missing? The Court will tell you that it's  
22 the Government's burden to prove to you beyond a reasonable  
23 doubt that Garfield Redd possessed that gun on that night,  
24 and, yes, we have raised a lot of questions. That's part of  
25 my purpose in representing Garfield Redd, is to raise the

1 questions to protect his innocence. I don't have to answer --  
2 I wish I could provide you with every answer. The Government,  
3 that's their responsibility. Where is the medic? We've heard  
4 two different versions of the alleged description of the way  
5 that Mr. Redd acted that night.

6 Now, undisputed, according to the reports, that a  
7 medic or paramedic or an ambulance, a medical person, was  
8 called to the scene. That's on the entry log that  
9 Officer Glanville referred to, the time that the medic was  
10 called, mere seconds after the initial call in to dispatch.  
11 Where is the medic, who could tell you -- the medical person,  
12 trained, who could give their opinion as to the state of  
13 Mr. Garfield Redd that night; not the interpretation of two  
14 members of the Flex Squad who say they think he was pretending  
15 either a seizure or unconsciousness, but something enough that  
16 they called a medic to come to the scene. So let's settle the  
17 difference and hear from the medic, but you have not. The  
18 Government has chosen not to call that person.

19 Where, as I mentioned before, is the fourth member,  
20 Officer Vargas up here on the street corner? Had  
21 Mr. Glanville gone to retrieve what he thought was a gun that  
22 was thrown, Officer Vargas was at the end of the street to  
23 stop the unarmed person running away. Why does Glanville  
24 continue to focus on the man who has just discarded a weapon  
25 and not let his other officers stop him on the corner? Why



1 have we not heard from Mr. Vargas? His name wasn't even  
2 mentioned to you in the initial *voir dire* as anyone you would  
3 recognize, meaning he was not even on the witness list.

4 What's very interesting that night, you'll have a  
5 chance, should you choose, to handle, to see this weapon,  
6 Government 3a. It's a heavy piece of metal, and supposedly  
7 someone threw it underhanded motion. Supposedly that's what  
8 one person saw, but nobody heard it. No one heard a large  
9 metal object hit the ground, pavement under a car or bounce.  
10 I submit to you it wasn't heard because it didn't happen. It  
11 wasn't thrown there by Garfield Redd. It was there already.

12 Don't let the Government fool you with, "This isn't  
13 CSI," or the argument that this is not like the television  
14 show. This is the Federal Government. You sit as jurors in a  
15 Federal courthouse. With all the resources of the Federal  
16 Government, they have the technology to investigate this case,  
17 and you see the results of it. Baltimore City had the  
18 technology, both in DNA and other fingerprinting techniques to  
19 try to lift anyone's fingerprints off of this gun, but it was  
20 not done. They didn't even bother to swab the gun for DNA,  
21 which is readily available. In fact, Mr. Harris testified  
22 that he does that. He swabs for DNA, and his only explanation  
23 for not swabbing was, well, it wasn't requested. No one even  
24 called him out to the scene. In fact, it's a good week,  
25 October 22nd being the incident, and his report of examining

1 the gun for fingerprints is November 1st.

2 Another interesting point on the forensics is he  
3 says, "Well, I didn't wipe the dust off," the graphite dust  
4 from testing, and, again, you can handle this. You can see  
5 whether or not you need to leave your own prints on here. You  
6 can see whether or not you feel or see graphite powder on your  
7 hands from handling the evidence that was supposedly dusted.  
8 No one has come in here and has told you that they wiped it  
9 down, and Mr. Faber, the firearms examiner, didn't even  
10 provide you with a date that he examined the firearm, so don't  
11 let them infer from the evidence in this case that Mr. Faber  
12 wiped off the gun, because he didn't even testify to you as to  
13 when he examined it.

14 Mr. Harris says that in only 1% of his cases does he  
15 find fingerprints. Ladies and gentlemen, I submit to you that  
16 is ridiculous. There is absolutely no empirical evidence. He  
17 doesn't even keep his own statistics of when he finds them and  
18 when he does not, and I submit to you that that is an  
19 off-the-cuff comment that has absolutely no basis in fact, and  
20 he's only doing the simplest method of detection, because he  
21 himself doesn't even use the Super Glue fuming method readily  
22 available in the Baltimore City Police Department.

23 This case, as a public defender, is terrifying for  
24 me, because it's my job to help you get it right, to defend  
25 Garfield Redd and to get it right, and it's terrifying to me

1 because I fear that you not be swayed by the talk of guns and  
2 the talk of drugs in the dark streets of Baltimore off the  
3 Pennsylvania Avenue on a late night. Don't let this cloud  
4 over your judgment of what the real evidence is in this case.  
5 There is a lack of evidence in this case against Garfield Redd  
6 for a reason, and the reason is: He did not possess the gun  
7 that night.

8           There is safety provided to keep you from unfair  
9 speculation about would've, could've, should've as to whether  
10 he possessed it, but, ladies and gentlemen, there is no  
11 evidence to show you that he, in fact, possessed it. If there  
12 was, it would have been presented, and the getting the guns  
13 off the streets of Baltimore, which one of the officers  
14 described as one of the missions of the Flex Squad, that is a  
15 great idea. We need to get the guns off the streets of  
16 Baltimore that are creating incalculable violence, but not at  
17 any cost do we then get the guns off and tag the local junky  
18 with a charge. Not at any cost should we overlook the lack of  
19 evidence in this case.

20           This is the United States of America, and we demand  
21 better. We demand more of our Government. We protect the  
22 vulnerable, even drug addicts, who is no less of a person.  
23 Now, I'm not here trying to infer any improper motive on the  
24 part of the Government. I'm not here to allege there is some  
25 grand conspiracy on the part of the Government to get the

1 junky drug addict Garfield Redd; just perhaps a little  
2 overzealous police work that skipped a few very important  
3 mistakes, and unfortunately that skip led to innocent mistakes  
4 and has now led to Garfield Redd unfortunately sitting in that  
5 chair, and the problem is that those mistakes led to his  
6 arrest and led to him being here.

7 Now, as I said, I wish I could provide you with all  
8 the answers, but the truth is: We don't know whose gun that  
9 was. The Government has presented no evidence to you  
10 whatsoever as to who purchased the gun, as to whether it was  
11 in the registry, or how it even got into the state of Maryland  
12 other than it was manufactured outside the state of Maryland  
13 according to their expert. Well, manufactured and sold to  
14 whom? No evidence it was sold to Garfield Redd. So somebody  
15 owned that gun at some time, but no one has presented that  
16 evidence to you. There is no evidence that someone lost that  
17 gun. There is no evidence presented to you that someone stole  
18 that gun from another individual. There must be a paper trail  
19 somewhere, but it's not been presented to you, and I submit to  
20 you that, if there was a paper trail that led to Garfield  
21 Redd, you certainly would have it before you.

22 Mr. Redd's mere presence on Gold Street that night  
23 trying to get drugs is not enough to convict him of possession  
24 of the gun. Being merely present in the vicinity of a gun is  
25 not enough. They have to prove to you that he physically

1 possessed it, and we submit to you that they cannot.

2           So, again, I can't give you every answer, but I can  
3 pose at least a plausible explanation of what happened that  
4 has culminated in Mr. Garfield Redd being here today. By the  
5 police officer's own admission, four members in 2006 of the  
6 Flex Squad were out driving around in one car looking to break  
7 up drug activity. They saw a crowd of people, 15 to 20  
8 people, on Gold Street, which everyone concedes is a  
9 high-crime, drug-infested area. They thought it was the  
10 makings, at least according to one of the officers, of a drug  
11 market in the process of getting set up, where junkies and  
12 users go to buy drugs and literally would line up to make a  
13 purchase.

14           Officer Glanville, I hope that he's not being  
15 malicious in his mistakes of what he thinks he saw that night.  
16 I submit to you that he's just mistaken. By his own  
17 admission, it was very, very dark. He sees a man emerge from  
18 the shadows. If Garfield Redd was sitting on that step in the  
19 shadows with this gun and a police car has either driven by  
20 him and/or two police officers have walked by him, depending  
21 on which officer you choose to believe or disbelieve, and he  
22 has this gun, and no one's paid him any attention because he's  
23 sitting in the shadows, why in the world would an individual  
24 then come out of the shadows with a gun and walk towards a  
25 police officer into an area where Officer Glanville says he

1 can see him? Why not just leave the gun in the shadows and  
2 walk away? Why not just leave the gun on the step or in the  
3 shadows by the step and walk away, because no one's seen him?  
4 No one's even bothered him yet. He's brought the attention to  
5 himself, according to the testimony of the police officers.

6 So I submit to you what Officer Glanville saw was a  
7 man who emerged from the shadows, walking or running, either  
8 five feet or ten to fifteen steps, and this man, Garfield  
9 Redd, made a motion, made some type of motion near the car.  
10 Again, there is even a discrepancy as to where the car is  
11 parked. One officer, I believe, put the car down further than  
12 the steps here. So, if that's true, Mr. Redd went this  
13 direction, threw the gun, then went that direction. Other  
14 officers said the car was further up the street.

15 Again, if someone had called the mobile crime  
16 processing unit, we could have taken pictures that night of  
17 where the gun was found, where the car was located, or what  
18 the lighting was like, but no one did.

19 **THE COURT:** Five minutes.

20 **MR. DRAPER:** Thank you, Your Honor. So  
21 Mr. Glanville sees him make some motion, and this all happens  
22 very, very fast, and a man is walking or running towards him  
23 coming out of the shadows, and Officer Glanville pulls his  
24 gun. He pulls his weapon. No one hears a gun drop, not even  
25 Officer Glanville, who is closest to the scene. Mr. Glanville

1       arrests Garfield Redd. He doesn't tackle him. He doesn't,  
2       according to him, lay a hand on him. He just lays down on the  
3       pavement, and he's arrested.

4               The Government asked Mr. Glanville, "Well, why  
5       didn't you shoot him? Why didn't you shoot the man running  
6       towards you five feet or ten to fifteen steps with a gun in a  
7       ready position, ready to shoot position? Why didn't you shoot  
8       him?" I submit to you he wasn't shot because  
9       Officer Glanville really didn't see the gun. If he had really  
10      seen a gun, he would have shot him for his own safety, and he  
11      would have been justified -- a man running towards him with a  
12      gun in the ready position? If he really threw the gun, he  
13      would have stopped and secured the gun, made sure no one else  
14      in that crowd got it, and Officer Vargas on that corner could  
15      have stopped the man running or walking away.

16             Mr. Redd, as I said, is just a junky. If Mr. Redd  
17      had had a gun this nice on October 22nd, 2006, it wouldn't  
18      have even gotten warm in his hand before it got turned over  
19      for money or drugs to get high. All he had on his person was  
20      one capsule of suspected heroin. Mr. Redd, the hearing-  
21      impaired person you see has used the apparatus here, simply  
22      tried to walk away, and, in his feeble efforts, perhaps was  
23      trying to discard his heroin, and he couldn't even do that.  
24      That's the motion we submit to you that was seen by  
25      Officer Glanville -- trying to throw away his stuff, and he

1       couldn't even do that. Remember, they told you, it was found  
2       in his left front pocket, in his front pants pocket, and he  
3       even failed in that -- the hearing-impaired junky who couldn't  
4       even get rid of his heroin.

5               I do ask you to return a verdict of not guilty in  
6       this case. I submit to you the evidence does not show that  
7       Garfield Redd possessed a firearm that night. He was simply  
8       in the wrong place at the wrong time, doing the wrong thing,  
9       trying to score heroin, but not possessing a gun. There is no  
10      evidence linking him to that gun, and no bullets on his  
11      person. There is no gunshot residue on his body, his clothes.  
12      There is no evidence of his DNA ever being on this weapon.  
13      All we have is a suspected heroin capsule.

14             This is not the crime of possession of a handgun.  
15      It's just the story of a junky trying to get high, who happens  
16      to be on the street the night the police find a handgun.  
17      Mr. Redd even failed in that. He wasn't even able to get high  
18      that night. So I ask you to please not take a shortcut with  
19      Mr. Redd's liberty, to reach the right decision, and to find  
20      Garfield Redd not guilty.

21             Thank you.

22             **THE COURT:** Thank you, Mr. Draper.

23             Government?

24             **MR. HAZEL:** Ladies and gentlemen, Officer Glanville  
25      didn't see Garfield Redd make some motion. He didn't see him



1 make some motion that could have been a toss of some heroin.  
2 He saw him with a gun, and he saw him toss the gun. That was  
3 his testimony, so, to side with what Mr. Draper is saying, to  
4 acquit in this case, you either have to believe that he's  
5 lying, or that he's mistaken. That's it.

6 Now, Mr. Draper tried to soften it up a little at  
7 the end there and say, "Well, you know, I certainly hope that  
8 Officer Glanville wasn't being malicious, and I'm not saying  
9 this was some grand conspiracy," but what did he tell you?  
10 What did he argue? He suggested to you that he's  
11 overreaching, that he's being less than truthful, suggesting  
12 that perhaps Officer Suiter came less than truthful, even  
13 suggested that the fingerprint examiner, in terms of saying  
14 whether or not he tested the fingerprint, did he really have  
15 powder on this gun? Even the fingerprints examiner is  
16 apparently willing to come in here and lie.

17 All these people willing to lie about Garfield Redd,  
18 yet they can't get together, and they're all willing to lie,  
19 but they can't get together and figure out for certain where  
20 the car was parked? They're all willing to lie on him, all  
21 willing to stretch the truth and do whatever it takes to get  
22 this guy off the street. They're all willing to do that, but  
23 they're not willing to get together and decide for certain  
24 whether they're going to say that the people were in the  
25 middle of the street or the side of the street?

1           No. That doesn't make sense. Each officer came in  
2       here and gave you their honest recollection of what happened,  
3       Officer Glanville saying that he saw the gun, saw the gun  
4       toss; Officer Suiter telling you that he saw the dipping  
5       motion. He was honest with you. How easy would it have been  
6       to say, "Oh, yeah, I saw the gun. I saw the gun"? How easy  
7       would that have been? But he's coming in here telling you  
8       what he saw and what he didn't see, so he said, "You know, it  
9       was dark. I couldn't see what it was, but I saw the dipping  
10      motion." That corroborates what Officer Glanville said,  
11      giving you his honest recollection of what he saw and what he  
12      didn't see. So that's lying? That doesn't make sense in this  
13      case, that he's mistaken.

14           Ladies and gentlemen, Officer Glanville told you  
15      that, from 10 to 15 steps away, he saw a man holding a gun,  
16      that he saw him run toward him in his direction, and toss a  
17      gun, and the gun is recovered there. How could he make a  
18      mistake like that? How could anybody make a mistake like  
19      that? You see me holding this pen in my hand. You see me  
20      toss the pen. You saw it. That's just a mistake? The gun  
21      just happens to be found right where he saw the gun being  
22      placed? Mistake doesn't make sense.

23           Now, certainly, ladies and gentlemen, there are  
24      variances in the stories in the testimony that the police  
25      officers told on some of the details, and those things, ladies

1 and gentlemen, those things came out on direct testimony.  
2 Those weren't things that Mr. Draper had to pull out. The  
3 officers, in their direct testimony, at the board, each and  
4 every one of them at the board, some of them said that they  
5 remember the car one place. Some of them said they remember  
6 the car in another place. Those are variances. This happened  
7 two years ago.

8 Ladies and gentlemen, you know, picture yourself,  
9 say, at a family reunion, and, you know, it's a normal family  
10 reunion, and all of a sudden, you know, Cousin Bob and  
11 Cousin Jim get into an argument. Cousin Bob ends up hitting  
12 Cousin Jim. Not a big event, doesn't happen at most family  
13 reunions. You tend to remember that. You'll remember  
14 probably forever that Cousin Bob hit Cousin Jim. It's a big  
15 moment.

16 It's two years later now. Say it's at the next  
17 family reunion. You have three people who are all there, who  
18 are talking to you about what happened that day. One of the  
19 people who is telling the story was standing next to  
20 Cousin Jim when it happened. One of the people was coming  
21 from the kitchen when it happened, and so they only saw it  
22 from behind. Another one is coming from down the steps and  
23 only comes after Cousin Jim has already been hit. As they  
24 tell you the story, all three of them get you to the same  
25 point -- that Cousin Bob hit Cousin Jim -- but one of them

1 might remember that Cousin Jim fell straight back, one of them  
2 might remember that Cousin Jim fell to the side, one of them  
3 might remember that it happened right before dinner, one of  
4 them might remember that it happened right after dinner.

5 It's two years later, three people looking at it  
6 from slightly different angles with slightly different  
7 recollections. It would be odd, I submit to you, if all of  
8 the officers came in here and, point for point for point,  
9 every single thing, lined up on something that happened two  
10 years ago, but, like the story of Cousin Bob hitting  
11 Cousin Jim, on the crucial elements, the significant points of  
12 what happened that day, there is corroboration that  
13 Officer Glanville sees the gun, corroborated by Suiter also  
14 seeing the dipping motion that Officer Glanville describes;  
15 corroboration from Officer Ivery seeing or coming up and being  
16 told, seconds later, "The gun has been tossed under the car."  
17 So, yes, there are variances, but those don't amount to  
18 reasonable doubt.

19 Now, I'm going to go through just some of the other  
20 points that Defense counsel has raised in the time that I have  
21 remaining. One point that Defense counsel harped on for some  
22 time, or spoke about -- I apologize. I didn't mean to say  
23 that -- spoke about for some time, is this lack of  
24 fingerprints, or this lack of DNA. Ladies and gentlemen, you  
25 see me holding this pen. You see me holding this pen. I take

1 it over, I toss it over to Mr. Levin. You saw me holding it.  
2 If Officer Harris comes in here and says, "You know what? I  
3 dusted it. I used my black powder, and, you know, I did  
4 whatever I could, but I didn't see a fingerprint on it," does  
5 that change the fact that you saw it in my hand? Do you need  
6 to look for my DNA to see if maybe I sneezed on it, like was  
7 suggested at some point? No.

8 All of these varied sort of complicated and, you  
9 know, these CSI techniques, they're all very interesting and  
10 fascinating. They don't replace eyewitness testimony. So  
11 counsel wants to criticize the Government for not bringing you  
12 all these different types of evidence that are allegedly  
13 available -- some are; some aren't. He wants to criticize the  
14 Government for all of these different things we bring,  
15 criticized us for not bringing in the medic, criticized us for  
16 not bringing in Officer Vargas. What would have been the  
17 point? He would have called them liars, too.

18 **MR. DRAPER:** Objection to the characterization, Your  
19 Honor.

20 **THE COURT:** Overruled. The jury will understand  
21 that this is argument. They will base their verdicts on the  
22 evidence. Overruled.

23 **MR. HAZEL:** The Defense wants to criticize us for  
24 all that they say we didn't bring in. What we brought you,  
25 ladies and gentlemen, is the best type of evidence:

1 eyewitness evidence -- somebody who saw the crime, not  
2 somebody who comes in with some fancy graphs and charts and  
3 says what microfibers were on the gun, or who sneezed on the  
4 gun, or who may have touched the gun. Somebody who saw the  
5 Defendant holding the gun, that's the evidence that the  
6 Government has brought you -- someone who saw him holding the  
7 gun.

8 Another point that's made -- this idea of gunshot  
9 residue. Why weren't tests for gunshot residue taken? Well,  
10 there was no allegation of a gunshot. Why are they testing  
11 him for gunshot -- no one claims that they saw Mr. Redd shoot  
12 the gun. None of the officers say, "Yeah, we think he fired  
13 the gun, so maybe we should check his hands for gunshot  
14 residue." Why are you checking his hands for gunshot residue?  
15 It doesn't make sense.

16 A few other points that were made by counsel. This  
17 idea -- and we heard it through some of the testimony and some  
18 of the cross-examination and some of the argument that this  
19 was a bad neighborhood, that, you know, people -- you know,  
20 you heard the investigator say, you know, people stash things.  
21 You know, a neighborhood like this, you find little stash  
22 areas. You know, if you don't want something on you, you want  
23 to hide something from police officers, you put it somewhere  
24 where somebody hopefully won't find it, or, if they find it,  
25 they won't connect it to you. Absolutely right, and the

1 Defendant in this case tried to stash the gun. He tried to  
2 stash the gun under a car. That's exactly what he did in this  
3 case. He sees an officer coming, and he tosses it under the  
4 car.

5 Another point on that, ladies and gentlemen. This  
6 idea that it's just a bad neighborhood, there are all these  
7 other people around, and, you know, counsel said at one point  
8 we're asking you to make an inference from the surroundings.  
9 You know, we're just asking you to draw an inference from the  
10 fact that he was there and this gun was found. That would be  
11 a good argument. It would be a somewhat persuasive argument  
12 if this were, in fact, a case where the only evidence we had  
13 put forward is that we found this gun, and the Defendant  
14 happened to be standing around. If that were the case we had  
15 presented to you where all an officer can tell you is, "Yeah,  
16 I found this gun over here on the ground and the Defendant was  
17 standing closest to it and so that's the guy who was  
18 arrested," and that's the guy that's on trial, if that was the  
19 case that we had here, then all these other things about the  
20 fingerprints and the DNA and the microfibers and, you know,  
21 all of that would make a lot more sense at that point.

22 **THE COURT:** Five more minutes.

23 **MR. HAZEL:** Thank you, Your Honor.

24 But that's not the case that we have here. We're  
25 not asking you to make any inference as to whether or not the

1 gun was his, because, again, there was direct testimony,  
2 direct evidence that the Defendant had a gun. So this idea  
3 that there are all these other people around, maybe there were  
4 all these other people around. Officer Glanville saw who put  
5 the gun there, and he said it best himself. When he was  
6 asked, "Oh, you found that gun there," he said, "No. I didn't  
7 find the gun there. I saw the Defendant put the gun there."

8 Just a couple more points. Counsel said there is no  
9 paper trail regarding the gun, no paper trail regarding  
10 ownership or who owned the gun. Ownership is not an issue  
11 here. He's not charged with being the lawful owner of the  
12 gun. He's not charged with having purchased the gun even. We  
13 haven't put any evidence in as to where he got the gun from.  
14 It's not relevant. The only relevant point is who had the gun  
15 that night, and evidence has been provided as to that point.

16 So, ladies and gentlemen, we've heard the evidence  
17 in this case. Oh! One other point I did want to make.  
18 Counsel made the point, "Well, no one heard the gun drop."  
19 Ladies and gentlemen, the evidence is that Officer Glanville,  
20 at this time, is screaming out instructions to the Defendant.  
21 There are other people around. They didn't hear the gun drop,  
22 or at least there hasn't been testimony. No one recalled  
23 hearing the gun drop. So what? He saw the gun. He saw the  
24 gun.

25 The evidence in this case is clear. October 22nd,



1     2006, Officer James Glanville sees the Defendant on the steps  
2     with the gun. The Defendant, knowing that there are officers  
3     on now -- on at least -- one would suspect he saw it on this  
4     side of the block, the side of the block closest to the grass,  
5     needs to get out of there, because he has a gun, and  
6     Mr. Draper says, "Well, why doesn't he just put the gun down  
7     there?" Well, he doesn't want to give up his gun, until he  
8     sees Officer Glanville. He realizes that not all the officers  
9     have gone down, but, in fact, that there is one that's been  
10    left behind, and that's Officer James Glanville, standing  
11    about 10 to 15 steps away from him, and so he tosses that gun,  
12    a gun that's then recovered moments later, seconds later by  
13    Officer Ivery. Saw the gun, saw him put it under there. The  
14    dip is seen, the dipping motion, by Mr. Suiter, the gun found  
15    seconds later.

16           The proof of the Defendant's guilt is clear. The  
17    Defendant has been proven, beyond a reasonable doubt, as being  
18    guilty of the crime possession of a firearm by a prohibited  
19    person. Ladies and gentlemen, when we started this case, the  
20    Defendant was entitled to a fair trial. He's now had that.  
21    When we started this case, the Defendant was entitled to be  
22    presumed innocent until the Government proved his guilt beyond  
23    a reasonable doubt, and we've now done that. The only thing  
24    left that this defendant is entitled to in this courtroom is  
25    your verdict of guilty. I simply ask that you give the

1 Defendant what he's entitled to.

2 Thank you.

3 **THE COURT:** Thank you. Members of the jury, can you  
4 hear me?

5 **JURORS:** Yes.

6 **THE COURT:** You are now about to enter your final  
7 duty, which is to decide the fact issues in the case.

8 Before you do that, I will instruct you on the law.  
9 You must pay close attention to me. I will go slowly and be  
10 as clear as possible.

11 Now, before you start trying to take notes on the  
12 instructions, let me tell you that I will give you my  
13 instructions at the end of my reading them to you, so you will  
14 have them, so, if you want to take notes, feel free to, but  
15 you don't have to try to xerox my notes, because they will be  
16 given to you.

17 It is evident to me that you followed the testimony  
18 with close attention. I will ask you to give me that same  
19 careful attention as I instruct you on the law. You have  
20 heard all of the evidence, as well as the final arguments of  
21 the lawyers. My duty at this point is to instruct you on the  
22 law, and your duty is to accept these instructions and apply  
23 them to the facts as you determined them.

24 On these legal matters, you must take the law as I  
25 give it to you. You should not single out any instructions as

1 alone stating the law, but you should consider the  
2 instructions as a whole when you retire to deliberate in the  
3 jury room. You should not, any of you, be concerned about the  
4 wisdom of any rule that I state. Regardless of any opinion  
5 that you may have as to what the law may be -- or ought to  
6 be -- you must base your verdict on the law which I will give  
7 you.

8           You, the members of the jury, are the sole and  
9 exclusive judges of the facts. You pass upon the weight of  
10 the evidence, you determine the credibility of the witnesses,  
11 and you draw whatever reasonable inferences you decide to draw  
12 from the facts as you determined them.

13           In determining the facts, you have to rely upon your  
14 own recollection of the evidence. What the lawyers have said  
15 in their opening statements or in their closing arguments or  
16 in their objections or in their questions, none of that is  
17 evidence, nor is anything I may have said during the trial or  
18 may say during the instructions evidence.

19           The evidence is the testimony given to you by the  
20 witnesses -- the answers they gave to the questions and any  
21 exhibits that were received into evidence. You may also  
22 consider any stipulations or agreements of the parties as  
23 evidence.

24           Now, since you are the sole and exclusive judges of  
25 the facts, I do not mean to indicate any opinion as to the

1 facts or what your verdict should be.

2 It is the duty of the attorney for each side of a  
3 case to object when the other side offers testimony or other  
4 evidence which that attorney believes is not properly  
5 admissible. The lawyers also have the right and duty to ask  
6 me to make rulings of law and to request conferences out of  
7 your hearing. All of these questions of law have to be  
8 decided by me. You should not show any prejudice against an  
9 attorney or his client because the attorney objected to the  
10 admissibility of evidence or asked for a conference out of  
11 your hearing or asked me to make a ruling on the law.

12 As I have indicated, my rulings on the admissibility  
13 of evidence do not indicate any opinion that I may have about  
14 the weight or effect of that evidence. You are the sole  
15 judges of the credibility -- that is, the believability -- of  
16 witnesses, and the weight and effect of all the evidence.

17 You are to perform the duty of finding the facts  
18 without bias or prejudice against or sympathy for any party.  
19 You are to perform your final duty in an attitude of complete  
20 fairness and impartiality.

21 Your verdict has to be based only upon the evidence  
22 developed at trial or the lack of evidence.

23 It would be improper for you to consider, in  
24 reaching your decision as to whether the Government has met  
25 its burden of proof, any personal feelings you may have about

1 the Defendant's race, religion, national origin, sex, or age.

2 All people are entitled to the presumption of innocence, and  
3 the Government has the burden of proof, as I will discuss in a  
4 moment.

5 It would be equally wrong for you to allow any  
6 feelings you have about the nature of the crime charged to  
7 interfere with your decision-making process.

8 To repeat, your verdict has to be based only on the  
9 evidence or lack of evidence in the case.

10 The case is important to the Government, for the  
11 enforcement of criminal laws is a matter of prime concern to  
12 the community. Equally, the case is important to the  
13 Defendant, who is charged with a serious crime.

14 The fact that the prosecution is brought in the name  
15 of the United States of America entitles the Government to no  
16 greater consideration than would be given to any other party  
17 to a lawsuit. By the same token, the Government is entitled  
18 to no less consideration. All parties, whether they're the  
19 Government or individuals, stand as equals at the bar of  
20 justice.

21 Your verdict should be based upon the facts as found  
22 by you from the evidence and the law contained in these  
23 instructions.

24 Although the Defendant has been indicted, you must  
25 remember that an Indictment is only an accusation; it is not

1 evidence. The Defendant has pled not guilty to that  
2 Indictment.

3 As a result of the Defendant's plea of not guilty,  
4 the burden is on the prosecution to prove guilt beyond a  
5 reasonable doubt. This burden never shifts to a defendant for  
6 the simple reason that the law never imposes upon a defendant  
7 in a criminal case the burden or duty of calling any witness  
8 or producing any evidence.

9 The law presumes the Defendant to be innocent of all  
10 charges against him. I therefore instruct you that the  
11 Defendant is to be presumed by you to be innocent throughout  
12 your deliberations until such time, as ever, that you as a  
13 jury are satisfied that the Government has proved him guilty  
14 beyond a reasonable doubt.

15 The Defendant began the trial here with a clean  
16 slate. This presumption of innocence alone is sufficient to  
17 acquit him unless you, as jurors, are unanimously convinced  
18 beyond a reasonable doubt of his guilt, after a careful and  
19 impartial consideration of all of the evidence in this case.  
20 If the Government fails to sustain its burden, you have to  
21 find the Defendant not guilty.

22 This presumption of innocence was with the Defendant  
23 when the trial began and remains with him, even now as I speak  
24 to you, and will continue with him into your deliberations  
25 unless and until you are convinced that the Government has

1 proved him guilty beyond a reasonable doubt.

2           There are two types of evidence upon which you may  
3 rely in deciding whether a defendant is guilty or not guilty.

4           One type of evidence is called direct evidence.  
5 Direct evidence is where a witness testifies to what he saw or  
6 heard or observed. In other words, when a witness testifies  
7 about what is known to him by his own knowledge by virtue of  
8 his own senses -- what he sees, feels, touches, or hears --  
9 that is called direct evidence.

10           Circumstantial evidence is evidence which tends to  
11 prove a disputed fact by proof of some other facts. You infer  
12 on the basis of reason and experience and common sense from an  
13 established fact the existence or the nonexistence of some  
14 other fact.

15           Circumstantial evidence is of no less value than  
16 direct evidence; as a general rule, the law makes no  
17 distinction between direct and circumstantial evidence, but  
18 simply requires that, before you convict a defendant, the jury  
19 has to be satisfied of his guilt beyond a reasonable doubt  
20 from all of the evidence in the case.

21           I emphasize to you that a lawyer's question is not  
22 evidence. At times, a lawyer, for example, on  
23 cross-examination, may have incorporated into a question a  
24 statement which assumes certain facts to be true and asked a  
25 witness if the statement was true. If the witness denies the

1 truth of a statement and there is no evidence in the record  
2 proving that the assumed fact is true, then you may not  
3 consider the fact to be true simply because it was contained  
4 in a lawyer's question.

5 Questions are not evidence; answers are.

6 The evidence in this case consists of the sworn  
7 testimony of the witnesses, the exhibits received in evidence,  
8 and stipulations.

9 Exhibits which have been marked for identification  
10 but not received may not be considered by you as evidence.  
11 Only those exhibits which were actually received will be  
12 considered evidence.

13 Also, you are to disregard any testimony when I have  
14 ordered it to be stricken. As I indicated before, only the  
15 witnesses' answers are evidence, and you are not to consider a  
16 question as evidence. Also, statements by the lawyers are not  
17 evidence.

18 You should consider the evidence in light of your  
19 own common sense and experience, and you may draw reasonable  
20 inferences from the evidence.

21 Anything that you have seen or heard about this case  
22 outside the courtroom is not evidence and must be entirely  
23 disregarded.

24 As I have told you, there has been at least one  
25 stipulation in the case. A stipulation is an agreement among



1 the parties that a certain fact is true, and you should regard  
2 such agreed facts as true.

3 During the trial, you have heard the attorneys and I  
4 have used from time to time in these instructions the word  
5 "inference," and the lawyers in their arguments have asked you  
6 to infer on the basis of your reason, experience, and common  
7 sense, from one or more established facts, the existence of  
8 some other fact.

9 An inference is not a suspicion or a guess. It is a  
10 reasoned, logical decision to conclude that a disputed fact  
11 does exist on the basis of another fact which you know exists.

12 There are times when different inferences may be  
13 drawn from facts, whether proved by direct or circumstantial  
14 evidence. The Government may ask you to draw one set of  
15 inferences while the Defense may ask you to draw another. It  
16 is for you, and you alone, to decide what inferences you will  
17 draw from the evidence.

18 The process of drawing inferences from facts in  
19 evidence is not a matter of guesswork or speculation. An  
20 inference is a deduction or a conclusion which you, the jury,  
21 may draw, but you're not required to draw, from the facts  
22 which have been established by either direct or circumstantial  
23 evidence. In drawing inferences, you should exercise your  
24 common sense.

25 So, while you are considering the evidence presented

1 to you, you are permitted to draw, from the facts which you  
2 find to be proven, such reasonable inferences as would be  
3 justified in light of your experience.

4 Here again, let me remind you that, whether based on  
5 direct or circumstantial evidence, or upon logical, reasoned  
6 inferences drawn from such evidence, you must be satisfied of  
7 the guilt of the Defendant beyond a reasonable doubt before  
8 you can convict.

9 Knowledge, willfulness, and intent involve the state  
10 of a person's mind. Accordingly, this is a fact that you are  
11 called upon to decide.

12 Rarely is there direct proof to establish the state  
13 of one's mind. This may be inferred from what one says or  
14 does -- his words, actions, and conduct at the time of the  
15 occurrence of certain events.

16 The intent with which an act is done is often more  
17 clearly and conclusively shown by the act itself or by a  
18 series of acts than by words or explanations of the acts  
19 uttered long after it happened. Accordingly, intent,  
20 willfulness, and knowledge are usually established by  
21 surrounding facts and circumstances as of the time the acts in  
22 question happened, or the events took place, and the  
23 reasonable inferences to be drawn from them.

24 The fact that one party called more witnesses or  
25 introduced more evidence than the other does not mean that you

1 should necessarily find the facts in favor of the side  
2 offering the most witnesses. By the same token, you do not  
3 have to accept the testimony of any witness who has not been  
4 contradicted or impeached, if you find the witness not to be  
5 credible. You also have to decide which witnesses to believe  
6 and which facts are true.

7 To do this, you must look at all the evidence,  
8 drawing upon your own common sense and personal experience.  
9 After examining all the evidence, you may decide that the  
10 party calling the most witnesses has not persuaded you because  
11 you do not believe its witnesses, or because you believe the  
12 fewer witnesses called by the other side.

13 In a moment, I will tell you certain things for  
14 evaluating credibility or believability of witnesses. For the  
15 moment, however, you should keep in mind that the burden of  
16 proof is always on the Government, and the Defendant is not  
17 required to call any witnesses or offer any evidence since he  
18 is presumed to be innocent.

19 A person who testifies is a witness. You are the  
20 sole judges of whether testimony should be believed. In  
21 making this decision, you may apply your own common sense and  
22 everyday experiences. In determining whether a witness should  
23 be believed, you should carefully judge all the testimony and  
24 evidence and the circumstances under which each witness has  
25 testified.

1           You should consider such things as the witness'  
2     behavior on the stand and way of testifying, the witness'  
3     opportunity to see or hear the things about which testimony  
4     was given, the accuracy of the witness' memory, did the  
5     witness have a motive not to tell the truth, does the witness  
6     have an interest in the outcome of the case, was the witness'  
7     testimony consistent, was the witness' testimony supported or  
8     contradicted by other evidence, and whether and the extent to  
9     which the witness' testimony in court was different from any  
10    statements made by the witness on any previous occasion.

11           You need not believe any witness even though the  
12    testimony is not contradicted. You may believe all, part, or  
13    none of the testimony of any witness.

14           The Defendant did not testify in this case. Under  
15    our constitution, he has no obligation to testify or to  
16    present any other evidence because it is the prosecution's  
17    burden to prove the Defendant guilty beyond a reasonable  
18    doubt. That burden remains with the prosecution throughout  
19    the entire trial, and never shifts to the Defendant. The  
20    Defendant is never required to prove that he is innocent.

21           You may not attach any significance to the fact that  
22    he did not testify. No adverse inference may be drawn against  
23    him by you because he did not take the witness stand. You may  
24    not consider this against the Defendant in your deliberations  
25    in the jury room.

1           You have heard the testimony of various law  
2 enforcement officials in this case. The fact that a witness  
3 may be employed as a law enforcement official does not mean  
4 that his testimony is necessarily deserving of more or less  
5 consideration or greater or lesser weight than that of an  
6 ordinary witness.

7           At the same time, it is quite legitimate for a  
8 Defense attorney to try to attack the credibility of a law  
9 enforcement witness on the grounds that his testimony may be  
10 colored by a personal or professional interest in the outcome  
11 of the case.

12           It is your decision, after reviewing all the  
13 evidence, whether to accept the testimony of a law enforcement  
14 witness and to give that testimony whatever weight, if any,  
15 you find it deserves.

16           In this case, I have permitted certain witnesses to  
17 express their opinions about matters that are in issue. An  
18 expert witness may be permitted to testify to an opinion on  
19 those matters about which he has special knowledge, skill, and  
20 training. Such testimony is presented to you on the theory  
21 that someone who is experienced in a field can assist you in  
22 understanding the evidence or in reaching an independent  
23 decision on the facts.

24           In weighing an expert's testimony, you may consider  
25 the witness' qualifications, his opinions, the reasons for

1     testifying, as well as all of the other considerations that  
2     ordinarily apply when you are deciding whether or not to  
3     believe a witness' testimony. You may give the expert  
4     testimony whatever weight, if any, you find it deserves in  
5     light of all of the evidence in the case. You should not,  
6     however, accept expert testimony merely because I allowed the  
7     witness to testify about his opinion, nor should you  
8     substitute it for your own reason, judgment, and common sense.  
9     Again, the determination of the facts in this case rests  
10    solely with you.

11             During the trial, you have heard testimony of  
12    witnesses or arguments by attorneys that the Government did  
13    not use specific investigative techniques. You may consider  
14    these facts in deciding whether the Government has met its  
15    burden of proof, because, as I told you, you should look at  
16    all of the evidence or lack of evidence in deciding whether  
17    the Defendant is guilty; however, you also are instructed that  
18    there is no legal requirement that the Government use any  
19    specific investigative technique to prove its case. Law  
20    enforcement techniques are not your concern.

21             Your concern, as I have said, is to determine  
22    whether or not, on the evidence or lack of evidence, the  
23    Defendant's guilt has been proved beyond a reasonable doubt.

24             With these preliminary instructions in mind, let us  
25    turn to the charge against the Defendant as contained in the

1 Indictment. Again, I remind you the Indictment is not  
2 evidence. It merely describes the charge against the  
3 Defendant. It is an accusation. It may not be considered by  
4 you as evidence of the guilt of the Defendant.

5 In reaching your determination of whether the  
6 Government has proved the Defendant guilty beyond a reasonable  
7 doubt, you may consider only the evidence introduced or lack  
8 of evidence.

9 The Defendant is not charged with committing any  
10 crime other than the offense contained in the Indictment. You  
11 have heard evidence of other acts allegedly committed by the  
12 Defendant. When that evidence was introduced, it was to be  
13 used solely for a limited purpose, but I emphasize to you that  
14 you are not to consider the evidence for any other purpose,  
15 and you are only to return a verdict as to the charge  
16 contained in the Indictment.

17 While on the subject of the Indictment, I draw your  
18 attention to the fact that the Indictment charges that  
19 specific offense occurred on or about a certain date. The law  
20 only requires a substantial similarity between the date  
21 alleged in the Indictment and the date established by the  
22 testimony or exhibits.

23 The Indictment charges the Defendant with being a  
24 person convicted of a crime who possessed a weapon shipped in  
25 interstate commerce. The Indictment reads that the Grand Jury

1 for the District of Maryland charged that, on or about October  
2 22, 2006, within the District of Maryland, Garfield Redd,  
3 having been convicted of a crime punishable by imprisonment  
4 for a term exceeding one year, did knowingly and unlawfully  
5 possess a firearm, and the firearm, the Hi-Point .40-calibre  
6 semi-automatic pistol, is described, in and affecting  
7 commerce.

8 Congress was of the view that the ease with which  
9 persons, including criminals, were able to acquire firearms  
10 was a significant factor in the prevalence of violent crime in  
11 the United States and that Federal control over possession of  
12 firearms by convicted persons would be helpful to State and  
13 local authorities in meeting this problem. Accordingly,  
14 Congress passed a series of laws designed to give support to  
15 Federal, State, and local law enforcement officials in  
16 combatting crime and violence. In your role as jurors, you  
17 are not to be concerned with the wisdom or policy of these  
18 laws. If, in fact, a violation occurred, the law should be  
19 enforced.

20 In general, these laws include provisions which  
21 prohibit certain categories of people from possessing or  
22 receiving firearms which were shipped in interstate commerce,  
23 and requires any person in the business of dealing in firearms  
24 to be licensed.

25 The Government contends that the Defendant was



1 within the class of people prohibited from possessing firearms  
2 shipped in interstate commerce because he had been convicted  
3 of a crime punishable by more than a year in jail.

4 The Government must prove each of the following  
5 elements beyond a reasonable doubt to sustain its burden of  
6 proving the Defendant guilty: First, that the Defendant was  
7 convicted in any court of a crime punishable by imprisonment  
8 for a term exceeding one year, as charged, and that the State  
9 has not restored the Defendant's civil rights following that  
10 conviction; second, the Government has to prove beyond a  
11 reasonable doubt that the Defendant knowingly possessed the  
12 firearm as charged, and, third, that the possession charged  
13 was in or affecting interstate commerce or foreign commerce.

14 The first element the Government must prove beyond a  
15 reasonable doubt before you convict is that, before the date  
16 the Defendant is charged with possessing the firearm, he had  
17 been convicted of a crime punishable by imprisonment for a  
18 term exceeding one year, and that the State has not restored  
19 his civil rights following that conviction.

20 The Defendant is alleged to have possessed the  
21 firearm charged in the Indictment.

22 Now, the Defendant and the Government have  
23 stipulated or agreed that the Defendant was convicted of a  
24 crime and that this crime is punishable by imprisonment for a  
25 term exceeding one year. They have also agreed that this

1 conviction occurred prior to the time the Defendant is alleged  
2 to have possessed the weapon charged in the Indictment. The  
3 parties have stipulated that the State of Maryland has not  
4 restored the Defendant's civil rights following the  
5 conviction.

6 I instruct you, in this connection, that the prior  
7 conviction that is an element of the charge here and is not  
8 disputed is only to be considered by you for the fact that it  
9 exists and for nothing else. You are not to consider it for  
10 any other purpose. You are not to speculate as to what the  
11 conviction was for. You may not consider the prior conviction  
12 in deciding whether it's more likely than not that the  
13 Defendant was in knowing possession of the gun that's charged,  
14 which is the disputed element of the offense.

15 The second element which the Government must prove  
16 beyond a reasonable doubt is that, on or about the date set  
17 forth in the Indictment, the Defendant knowingly possessed a  
18 firearm.

19 A "firearm" is defined as any weapon which will or  
20 is designed to or may be readily converted to expel a  
21 projectile by the action of an explosive.

22 To "possess" means to have something within a  
23 person's control. This does not necessarily mean that the  
24 Defendant had to have held it physically; that is, to have  
25 actual possession of it. As long as the firearm was in the

1 Defendant's control, he possesses it. If you find that the  
2 Defendant either had actual possession of the firearm, or that  
3 he had the power and intention to exercise control over it,  
4 even though it was not in his physical possession, you may  
5 find that the Government has proven possession.

6 The law also recognizes that possession may be sole  
7 or joint. If one person alone possesses an object, that's  
8 sole possession; however, it is possible that more than one  
9 person may have the power and intention to exercise control  
10 over the firearm. This is called joint possession. If you  
11 find that the Defendant had such power and intention, then he  
12 possessed the firearm under this element, even if he possessed  
13 it jointly with another. Proof of ownership of the firearm is  
14 not required.

15 To satisfy this element, you must also find that the  
16 Defendant knowingly possessed the firearm. This means that he  
17 possessed it purposely and voluntarily, and not by accident or  
18 mistake. It also means that he knew the weapon was a firearm  
19 as we commonly use the word; however, the Government is not  
20 required to prove that the Defendant knew that he was breaking  
21 the law.

22 The third element that the Government must prove  
23 beyond a reasonable doubt is that the firearm that the  
24 Defendant is charged with possessing was in or affecting  
25 interstate commerce.

1           This means that the Government must prove that, at  
2           some time before the Defendant's possession, the firearm had  
3           traveled in interstate commerce. It is sufficient for the  
4           Government to establish this element by proving that, at any  
5           time before the date charged in the Indictment, the firearm  
6           crossed a state line. It's not necessary that the Government  
7           prove that the Defendant himself carried it across a state  
8           line, nor does the Government have to prove who carried it  
9           across, or how it was transported. It is also not necessary  
10          for the Government to prove that the Defendant knew that the  
11          firearm had previously traveled in interstate commerce.

12                 In this regard, there has been evidence that the  
13          firearm in question was made in a different state than the  
14          state where the Defendant is charged with possessing it. You  
15          are permitted to infer from these facts that the firearm  
16          traveled in interstate commerce; however, you are not required  
17          to do so.

18                 You may not infer that the Defendant is guilty of  
19          participating in criminal conduct merely from the fact that he  
20          was present at the time the crime was being committed and had  
21          knowledge that it was being committed.

22                 The question of possible punishment of the Defendant  
23          is of no concern to the jury and should not in any sense enter  
24          into and influence your deliberations. The duty of imposing  
25          sentence rests exclusively upon me. Your function is to weigh

1 the evidence in the case, and to determine whether or not the  
2 Defendant is guilty beyond a reasonable doubt based solely on  
3 the evidence. Under your oath as jurors, you cannot allow a  
4 consideration of the punishment, which may be imposed upon the  
5 Defendant if he is convicted, to influence your verdict in any  
6 way or in any sense to enter into your deliberations.

7 You will now be pleased to know that I have reached  
8 the last part of these instructions relating to the mechanics  
9 and procedure of your deliberations.

10 When you retire to the jury room, you will select  
11 one of your number to act as foreperson. The foreperson will  
12 preside over your deliberations and be your spokesperson here  
13 in court. If it becomes necessary during your deliberations  
14 to communicate with me, you may send a note by the Bailiff  
15 signed by your foreperson or by one or more members of the  
16 jury. No member of the jury should ever attempt to  
17 communicate with me by any means other than a signed writing,  
18 and I will never communicate with any of you on any subject  
19 touching the merits of the case otherwise than in writing or  
20 here orally in open court.

21 You will note from the oath that's about to be taken  
22 by the Bailiff that he, too, is forbidden from communicating  
23 with you on any matter touching the merits of the case. Now,  
24 the Bailiff of course can ask you if you've had enough note  
25 pads or if the room temperature is okay. He just can't talk

1 to you about the merits of your deliberations.

2 Also, please bear in mind that you are never to  
3 reveal to any person, not even to the Court, how you stand  
4 numerically or otherwise until you have reached a unanimous  
5 verdict. I never need to know that there are so many of you  
6 for guilty or so many of you for not guilty. That's  
7 information I cannot use. Please don't transmit that  
8 information to me.

9 Now, to help you, we have prepared a verdict form.  
10 It is this short questionnaire. It has one question on it:  
11 "How do you find the Defendant, Garfield Redd, as to Count 1  
12 of the Indictment," and the choices are "not guilty" and  
13 "guilty." There is a place for a date and a signature of your  
14 foreperson, and, by completing this form, that's how you all  
15 record your verdict. When you have reached agreement, then  
16 the foreperson will fill it in, but, before the foreperson  
17 fills in the verdict form, all of you have to agree to it.

18 When you return to the courtroom, the Clerk will  
19 take the roll, and will then ask if you have agreed of your  
20 verdict, and, if you have, you'll say, "We have." He will  
21 then ask you, "Who will speak for you," and you will say, "Our  
22 foreperson." The foreperson will then give the verdict to the  
23 Clerk.

24 The verdict has to represent the considered judgment  
25 of each of you. In order to return a verdict, all of you have

1 to agree on it. In other words, your verdict has to be  
2 unanimous.

3 It is your duty to consult with one another and to  
4 deliberate with a view to reaching an agreement, if you can do  
5 so without doing any injustice to your individual judgment.  
6 Each of you has to decide the case for yourself, but do so  
7 only after an impartial consideration of all the evidence with  
8 your fellow jurors. During the course of your deliberations,  
9 do not hesitate to reexamine your own views and change your  
10 opinion, if you are convinced it is wrong, but do not  
11 surrender your honest conviction as to the weight or effect of  
12 the evidence solely because of the opinion of your fellow  
13 jurors or for the mere purpose of returning a verdict.

14 As I've told you at the beginning, remember, you are  
15 not partisans now. You are judges -- judges of the facts of  
16 this case.

17 Counsel, please approach.

18 (Whereupon, the following conference was held at the  
19 bench.)

20 **THE COURT:** Exceptions, Government?

21 **MR. HAZEL:** I'm sorry, Your Honor?

22 **THE COURT:** Exceptions to the --

23 **MR. HAZEL:** No, Your Honor.

24 **THE COURT:** Exceptions?

25 **MR. DRAPER:** We renew the prior request and

1 objections --

2 **THE COURT:** I've considered them restated in full  
3 here.

4 **MR. DRAPER:** Based on the Government's rebuttal, we  
5 had proposed two eyewitness instructions, Number 13 and 14,  
6 and we would request those in light of the Government's  
7 rebuttal where they argued eyewitness.

8 **THE COURT:** I don't recall the eyewitness thing.  
9 What about the argument are you trying to --

10 **MR. DRAPER:** I have --

11 **THE COURT:** -- remedy?

12 **MR. DRAPER:** Just simply that these are two proposed  
13 instructions that come from the treatise. They're not out of  
14 Sands. I had put them in a proposed -- basically saying that  
15 take it for what it's worth. The Government was saying that  
16 more -- I'm afraid that the Government's argument could be  
17 interpreted as saying that eyewitness testimony is due more  
18 weight than other types of testimony.

19 **THE COURT:** Okay. I believe I properly instructed  
20 the jury with respect to judging witness credibility.  
21 Included in those instructions was the requirement that they  
22 consider such things as the witness' opportunity to see or  
23 hear the things about which testimony was given, and I think  
24 that was adequately covered in the instructions. Accordingly,  
25 I will not give the non-patterned instructions that are



1 proposed. Please make sure that Mr. Lawson has a copy for the  
2 record --

3 **MR. DRAPER:** Yes, Your Honor.

4 **THE COURT:** -- should that be necessary.

5 Anything further?

6 **MR. DRAPER:** Nothing, Your Honor.

7 **THE COURT:** Okay. Counsel, please let Ron know  
8 where you are so that he can contact you. Also, please be no  
9 more than ten minutes away by phone. Please review the  
10 evidence before it goes back. I made one change in the  
11 instructions. I just eliminated the final reference of felons  
12 that is there. I did not read that reference, but I will  
13 change the instructions that will go back to them so that it  
14 does not include that reference, so please be sure, again,  
15 that you review the instructions that go back, review the  
16 verdict forms that go back, review the exhibits that go back,  
17 and make sure that it's basically signed off with Ron that --

18 **MR. DRAPER:** Yes, Your Honor.

19 **THE COURT:** -- everything's kosher that's going  
20 back, okay?

21 (Whereupon, the bench conference was concluded.)

22 **THE COURT:** Please swear the Bailiff.

23 **THE CLERK:** Please raise your right hand.

24 (Bailiff sworn.)

25 **THE CLERK:** State your name for the record.

1                   **CSO:** Court security officer Paul Sacca.

2                   **THE COURT:** Thank you. Alternates Number 1 and 2,  
3                   thank you very much. You have been my insurance policy. As  
4                   you can see, we have a jury intact, and I'm surprised that all  
5                   came back today, so we will not be needing your further  
6                   services. We do have a small token of our appreciation in the  
7                   form of a certificate for your service. I thank you. You are  
8                   free to go. Good day.

9                   **JUROR:** Thank you.

10                  **THE COURT:** Members of the jury, during your  
11                  deliberations, remember you may feel free to use your notes.  
12                  Remember that notes are not evidence, but just reminders of  
13                  what the evidence was, but, again, you are permitted to use  
14                  your notes during the deliberations. For purposes of your  
15                  planning, I will keep you here no later than 5:00 this  
16                  afternoon, so, if you haven't reached a verdict by 5:00, feel  
17                  free to break. We'll bring you in tomorrow morning at a  
18                  reasonable hour, and you can continue your deliberations.

19                  The evidence, sets of my instructions, and sets of  
20                  the questionnaire will be brought back to you after we check  
21                  them. We will not be sending back the gun. That's just a  
22                  practice here. If any of you want to feel it or heft it or  
23                  see it before you go back and begin your deliberations, let me  
24                  know, and I'll have it passed around. Does anyone want to see  
25                  or feel or heft the gun?

1 Yes. Would you circulate the gun, Ron. Publish it  
2 to the jury, please, and everyone who wants to touch it or  
3 feel it or weigh it, get a chance to. Feel free to drop it if  
4 you want to drop it. I think further down the front row,  
5 please. Further down the front row so everyone who wants to  
6 get a chance to has a chance to handle it.

7 Again, it will be in Mr. Lawson's custody. If you  
8 need it during your deliberations, we'll bring you back in if  
9 you want to, again, examine it further during that period of  
10 time.

11 Thank you. You may now begin your deliberations.  
12 Again, your first order of business will be electing one of  
13 you to serve as your foreperson.

14 (Jury excused.)

15 **THE COURT:** Counsel, thank you for an efficiently  
16 tried case.

17 **MR. HAZEL:** Thank you, Your Honor.

18 **MR. LEVIN:** Your Honor, may I get the Court's  
19 permission not to return today?

20 **THE COURT:** Yes.

21 **MR. LEVIN:** Thank you. Since I played such a  
22 minimal role.

23 **THE COURT:** You're going to let him solo now, huh?

24 **MR. LEVIN:** Thank you.

25 **THE COURT:** We're in recess, folks.

1           **THE CLERK:** This Honorable Court stands in recess.

2                           (Recess taken, 2:51 p.m. - 4:45 p.m.)

3           **THE CLERK:** Please rise. This Honorable Court  
4 resumes in session.

5           **THE COURT:** Good afternoon. Please be seated.  
6 Counsel, we have this note from the jury: "What is the legal  
7 definition of 'beyond a reasonable doubt'? Some of us still  
8 have 'doubt.' What is 'reasonable' doubt?"

9                           Let me hear from you. Don't all jump in at once.  
10                          Government, any thoughts?

11           **MR. HAZEL:** I was still formulating my thoughts to  
12 be quite honest, Your Honor. My understanding, at least as  
13 even looking at what was filed by counsel, is that the Fourth  
14 Circuit has apparently looked unfavorably upon the Court  
15 further defining reasonable doubt.

16           **THE COURT:** Yes. That's an understatement, but  
17 accurate.

18           **MR. HAZEL:** Right, which sort of -- I don't know  
19 that that leaves us with much to really say in response to  
20 this.

21           **THE COURT:** My inclination is to tell them that --  
22 well, let me hear from you, Mr. Draper.

23           **MR. DRAPER:** Your Honor, we, of course, renew our  
24 request -- I believe it was Defendant's Request Number 3  
25 that's previously been filed with the Court, which

1 acknowledged as well the case law of the Fourth Circuit on  
2 this particular point.

3 **THE COURT:** Okay. My inclination is to call them  
4 in, tell them that I've received the note, and explain to them  
5 that some things the law commits to the common sense and  
6 experience of jurors without any attempt to define, and the  
7 determination of whether something has been proved beyond a  
8 reasonable doubt is one of those things. Accordingly, I  
9 cannot define it for them.

10 Any objections to that, folks?

11 **MR. HAZEL:** I think that's what the case law  
12 requires.

13 **MR. DRAPER:** Your Honor, we would object. Our  
14 preference would be that the Court not give any instruction to  
15 the jurors at all.

16 **THE COURT:** Not answer their question, you mean?

17 **MR. DRAPER:** Either not answer the question, or give  
18 a definition. I think that --

19 **THE COURT:** Thank you. You have your objection.  
20 Ask the jury to join us, please.

21 (Jury enters.)

22 **THE COURT:** Please be seated. I have received your  
23 note: "What is the legal definition of 'beyond a reasonable  
24 doubt'? Some of us still have doubt. What is considered  
25 'reasonable' doubt?" It's, of course, signed by your jury

1 foreperson.

2           Members of the jury, there is some things that the  
3 law does not attempt to define, because we recognize that  
4 there are certain things that are committed to you in your  
5 role as judges of the facts, and, as we say, we anticipate  
6 that you would bring your experience and common sense into the  
7 jury room with you. So the law makes no effort to define what  
8 is beyond a reasonable doubt. It leaves it to you to  
9 determine, again, using common sense and experience, whether  
10 the Government has proved someone guilty beyond a reasonable  
11 doubt.

12           The words are not unusual words. They're not words  
13 that have any sort of specialized legal meaning. They are  
14 merely terms and a concept that you encounter in your everyday  
15 lives, and, as I said, you are trusted and empowered to make  
16 that determination without any special legal technical sense  
17 or any definition of the terms in any legal or technical way.

18           Now, it is 5 o'clock, so I'm going to suggest that  
19 you all break for the day, and I will ask you to be here  
20 tomorrow morning no later than 9:30, and, at 9:30, I will ask  
21 that you resume your deliberations. Now, as you break up, end  
22 your deliberations at the point where you're all together.  
23 There shouldn't be two of you or three of you over here or  
24 four of you over there having discussions. Your deliberations  
25 have to be done as a group and together, so, if you walk each

1 other to the car or the bus stop, please talk about anything  
2 else but the case.

3 Again, your deliberations, your discussions about  
4 the case, have to be done together. Obviously you can think  
5 about it tonight, get a good night's sleep, good night's rest,  
6 and come in tomorrow and begin the deliberations again, but I  
7 ask only that you don't engage in deliberations. Again,  
8 please don't conduct any investigation on your own. Don't  
9 consult any authorities. Don't try to apply a dictionary  
10 definition to the matter.

11 Again, have some trust in your own judgment and in  
12 your collective wisdom as a jury. That's pretty much what the  
13 founders did. They had faith and confidence in your  
14 collective wisdom as a jury. Again, this is not a technical  
15 legal matter. It's a matter of common sense and experience,  
16 and that's what you're expected to bring to bear on this.

17 Good night, ladies and gentlemen. See you tomorrow  
18 morning.

19 **JUROR:** Thank you.

20 **THE CLERK:** Please rise. This Honorable Court  
21 stands in recess until tomorrow morning at 9:30.

22 **THE COURT:** You're free to go, members of the jury.  
23 (Jury excused.)

24 **THE COURT:** Counsel, we're going to just let them  
25 start at 9:30. There is not going to be any formal

1 sending-out process tomorrow morning. So, again, if you'll  
2 just be available at 9:30 for Ron to get in touch with you.

3 Any further objections, counsel?

4 **MR. DRAPER:** Just as stated before, Your Honor.

5 **THE COURT:** Very good. Government?

6 **MR. HAZEL:** No, Your Honor.

7 **THE COURT:** Very good. Tomorrow morning, please be  
8 on call starting at 9:30.

9 **THE REPORTER:** This Honorable Court stands in recess  
10 until tomorrow morning at 9:30.

11 (Proceedings adjourned.)

12  
13  
14 I, Martin J. Giordano, Registered Merit Reporter and Certified  
15 Realtime Reporter, certify that the foregoing is a correct  
16 transcript from the record of proceedings in the  
17 above-entitled matter.

18  
19 \_\_\_\_\_  
20 Martin J. Giordano, RMR, CRR

\_\_\_\_\_  
Date



INDEXUNITED STATES v. GARFIELD REDDJURY TRIAL - VOLUME II - SEPTEMBER 3, 2008

	PAGE
COMMENCEMENT OF PROCEEDINGS.....	205
JURY CHARGE CONFERENCE.....	205
<u>WITNESSES FOR</u>	
<u>THE DEFENSE:</u>	
JOSEPH SEGRETI	
Sworn.....	218
Direct Examination by MR. DRAPER.....	218
Witness Excused.....	225
CLOSING ARGUMENT BY THE GOVERNMENT.....	228
CLOSING ARGUMENT BY THE DEFENSE.....	235
REBUTTAL ARGUMENT BY THE GOVERNMENT.....	251
INSTRUCTIONS TO THE JURY.....	261
EXCEPTIONS CONFERENCE.....	282
NOTE FROM THE JURY.....	287
PROCEEDINGS ADJOURNED.....	291

	<b>21st</b> [2] - 213:12, 213:21 <b>22</b> [3] - 209:23, 209:24, 275:2 <b>225</b> [1] - 292:11 <b>228</b> [1] - 292:12 <b>22nd</b> [5] - 229:8, 236:23, 244:25, 250:17, 259:25 <b>235</b> [1] - 292:13 <b>251</b> [1] - 292:14 <b>261</b> [1] - 292:15 <b>27</b> [1] - 215:24 <b>27th</b> [2] - 213:16, 220:5 <b>282</b> [1] - 292:16 <b>287</b> [1] - 292:17 <b>291</b> [1] - 292:18 <b>2:51</b> [1] - 287:2	<b>9</b>
<b>'97</b> [1] - 213:4 <b>'99</b> [1] - 213:7 <b>'beyond</b> [2] - 287:7, 288:23 <b>'doubt</b> [1] - 287:8 <b>'reasonable'</b> [2] - 287:8, 288:25		<b>9</b> [6] - 206:22, 210:14, 210:19, 210:22, 211:6, 211:10 <b>9:30</b> [7] - 289:20, 290:21, 290:25, 291:2, 291:8, 291:10
<b>1</b>		<b>A</b>
<b>1</b> [5] - 205:13, 205:16, 217:16, 281:11, 285:2 <b>1%</b> [1] - 245:14 <b>1/21/05</b> [1] - 213:22 <b>10</b> [7] - 207:1, 229:23, 229:24, 238:8, 238:12, 253:15, 260:11 <b>10/27/2000</b> [1] - 213:18 <b>101</b> [1] - 204:24 <b>10:00</b> [1] - 229:9 <b>11</b> [2] - 207:19, 211:15 <b>12</b> [3] - 207:23, 214:9, 215:25 <b>12:32</b> [1] - 204:9 <b>12:46</b> [1] - 217:17 <b>12th</b> [1] - 214:5 <b>13</b> [2] - 208:2, 283:5 <b>14</b> [1] - 283:5 <b>15</b> [14] - 211:21, 227:13, 227:15, 229:23, 229:24, 235:19, 236:18, 237:19, 237:22, 238:8, 238:12, 248:7, 253:15, 260:11 <b>18</b> [1] - 209:2 <b>19</b> [1] - 209:6 <b>1984</b> [1] - 218:16 <b>1996</b> [1] - 214:4 <b>1998</b> [3] - 214:5, 214:9, 216:1 <b>1999</b> [1] - 213:6 <b>1:00</b> [2] - 216:25, 217:17 <b>1st</b> [1] - 245:1	<b>3</b>	<b>able</b> [3] - 214:13, 251:17, 275:9 <b>above-entitled</b> [2] - 204:10, 291:17 <b>Absolutely</b> [1] - 257:25 <b>absolutely</b> [4] - 236:7, 241:18, 245:16, 245:19 <b>accept</b> [5] - 211:1, 261:22, 270:3, 272:13, 273:6 <b>access</b> [2] - 224:14, 224:15 <b>accident</b> [1] - 278:17 <b>According</b> [1] - 210:17 <b>according</b> [6] - 239:10, 243:6, 247:13, 248:10, 249:5, 250:2 <b>Accordingly</b> [6] - 215:23, 269:10, 269:19, 275:13, 283:24, 288:8 <b>accuracy</b> [1] - 271:4 <b>accurate</b> [1] - 287:17 <b>accusation</b> [2] - 264:25, 274:3 <b>acknowledged</b> [1] - 288:1 <b>acquire</b> [1] - 275:9 <b>acquit</b> [2] - 252:4, 265:17 <b>act</b> [3] - 269:16, 269:17, 280:11 <b>acted</b> [1] - 243:5 <b>action</b> [1] - 277:21 <b>actions</b> [1] - 269:14 <b>activities</b> [1] - 236:15 <b>activity</b> [6] - 222:18, 223:16, 223:24, 223:25, 240:19, 248:7 <b>acts</b> [4] - 269:18, 269:21, 274:11 <b>actual</b> [3] - 233:9, 277:25, 278:2 <b>add</b> [1] - 241:20 <b>addict</b> [1] - 247:1 <b>addicts</b> [1] - 246:22 <b>addition</b> [1] - 234:5 <b>additional</b> [4] - 216:12, 224:25, 225:16, 241:5 <b>additionally</b> [2] - 210:13, 211:20 <b>address</b> [1] - 221:1 <b>adequately</b> [1] - 283:24 <b>adjourned</b> [1] - 291:11 <b>ADJOURNED</b> ..... [1] - 292:18 <b>Administration</b> [1] - 219:14 <b>admissibility</b> [2] - 263:10, 263:12 <b>admissible</b> [1] - 263:5 <b>admission</b> [2] - 248:5, 248:17 <b>admitted</b> [4] - 220:15, 238:5, 238:9, 238:24 <b>admittedly</b> [1] - 240:15 <b>adverse</b> [1] - 271:22
	<b>3</b>	
	<b>3</b> [5] - 204:9, 205:1, 205:23, 287:24, 292:3 <b>30</b> [1] - 226:3 <b>35</b> [2] - 226:17, 234:25 <b>3a</b> [2] - 241:18, 244:6 <b>3b</b> [1] - 242:7 <b>3c</b> [1] - 242:8	
	<b>4</b>	
	<b>4</b> [3] - 206:2, 206:4, 238:17 <b>40-calibre</b> [1] - 275:5 <b>410-962-4504</b> [1] - 204:25 <b>4:45</b> [1] - 287:2	
	<b>5</b>	
	<b>5</b> [4] - 206:6, 206:8, 220:24, 289:18 <b>5/12/98</b> [1] - 214:10 <b>500</b> [3] - 220:24, 229:10, 234:12 <b>541</b> [2] - 220:10, 220:18 <b>5515</b> [1] - 204:23 <b>5:00</b> [2] - 285:15, 285:16 <b>5:03</b> [1] - 204:9	
	<b>6</b>	
	<b>6</b> [6] - 206:10, 206:12, 210:11, 219:10, 220:13, 220:14	
	<b>7</b>	
	<b>7</b> [2] - 206:14, 206:16 <b>7th</b> [1] - 214:4	
	<b>8</b>	
	<b>8</b> [1] - 206:18	
<b>2</b>		
<b>2</b> [5] - 205:19, 220:21, 229:16, 233:19, 285:2 <b>20</b> [6] - 209:10, 226:9, 228:11, 235:19, 236:18, 248:7 <b>20-minute</b> [2] - 237:19, 237:22 <b>2000</b> [5] - 213:10, 213:17, 215:25, 220:1, 220:5 <b>2001</b> [1] - 219:20 <b>2005</b> [2] - 213:12, 213:21 <b>2006</b> [6] - 229:8, 236:23, 248:5, 250:17, 260:1, 275:2 <b>2008</b> [3] - 204:9, 205:1, 292:3 <b>205</b> [2] - 292:6, 292:7 <b>21</b> [2] - 209:2, 212:6 <b>21201</b> [1] - 204:24 <b>218</b> [2] - 292:10, 292:11		

<p><b>affecting</b> [4] - 233:22, 275:6, 276:13, 278:24</p> <p><b>afraid</b> [1] - 283:16</p> <p><b>afternoon</b> [9] - 205:5, 217:25, 228:16, 228:17, 235:6, 235:7, 238:6, 285:16, 287:5</p> <p><b>afterwards</b> [1] - 217:10</p> <p><b>age</b> [1] - 264:1</p> <p><b>Agent</b> [1] - 204:19</p> <p><b>ago</b> [2] - 254:7, 255:10</p> <p><b>agree</b> [2] - 281:17, 282:1</p> <p><b>agreed</b> [4] - 268:2, 276:23, 276:25, 281:19</p> <p><b>agreement</b> [4] - 238:25, 267:25, 281:15, 282:4</p> <p><b>agreements</b> [1] - 262:22</p> <p><b>Alan</b> [1] - 219:23</p> <p><b>allegation</b> [1] - 257:10</p> <p><b>allege</b> [2] - 207:14, 246:24</p> <p><b>alleged</b> [5] - 240:19, 243:4, 274:21, 276:20, 277:1</p> <p><b>allegedly</b> [5] - 237:13, 239:1, 239:21, 256:12, 274:11</p> <p><b>allow</b> [4] - 236:14, 236:19, 264:5, 280:3</p> <p><b>allowed</b> [2] - 214:23, 273:6</p> <p><b>alone</b> [4] - 262:1, 265:16, 268:16, 278:7</p> <p><b>Alternates</b> [1] - 285:2</p> <p><b>Altima</b> [5] - 219:7, 219:20, 219:22, 219:25, 240:5</p> <p><b>ambulance</b> [2] - 231:1, 243:7</p> <p><b>America</b> [2] - 246:20, 264:15</p> <p><b>AMERICA</b> [1] - 204:4</p> <p><b>amount</b> [2] - 223:25, 255:17</p> <p><b>angle</b> [1] - 231:22</p> <p><b>angles</b> [1] - 255:6</p> <p><b>answer</b> [6] - 225:2, 243:1, 243:2, 248:2, 288:16, 288:17</p> <p><b>answers</b> [4] - 247:8, 262:20, 267:5, 267:15</p> <p><b>anticipate</b> [2] - 216:9, 289:5</p> <p><b>Anyway</b> [1] - 207:18</p> <p><b>apart</b> [1] - 216:5</p> <p><b>apologize</b> [1] - 255:22</p> <p><b>apparatus</b> [1] - 250:21</p> <p><b>appeared</b> [1] - 222:17</p> <p><b>application</b> [2] - 219:17, 219:19</p> <p><b>applied</b> [1] - 219:21</p> <p><b>applies</b> [2] - 236:11, 236:13</p> <p><b>apply</b> [5] - 207:2, 261:22, 270:21, 273:2, 290:9</p> <p><b>appreciation</b> [1] - 285:6</p> <p><b>approach</b> [2] - 225:10, 282:17</p> <p><b>area</b> [10] - 223:9, 223:23, 223:24, 224:1, 229:15, 229:17, 229:18, 231:15, 248:9, 248:25</p> <p><b>areas</b> [1] - 257:22</p> <p><b>argue</b> [1] - 252:10</p> <p><b>argued</b> [1] - 283:7</p> <p><b>arguing</b> [1] - 217:8</p>	<p><b>argument</b> [9] - 228:12, 244:13, 254:11, 256:21, 257:18, 258:11, 283:9, 283:16</p> <p><b>ARGUMENT</b> [3] - 292:12, 292:13, 292:14</p> <p><b>arguments</b> [5] - 225:17, 261:20, 262:15, 268:5, 273:12</p> <p><b>armed</b> [1] - 210:18</p> <p><b>arrest</b> [2] - 222:2, 247:6</p> <p><b>arrested</b> [4] - 235:9, 240:13, 250:3, 258:18</p> <p><b>arrests</b> [1] - 250:1</p> <p><b>arrived</b> [1] - 239:2</p> <p><b>Assault</b> [4] - 213:4, 213:7, 213:8, 213:22</p> <p><b>assault</b> [9] - 214:7, 214:22, 214:24, 214:25, 215:2, 215:8, 215:11, 215:25, 216:1</p> <p><b>assaults</b> [2] - 223:19</p> <p><b>assigned</b> [1] - 218:23</p> <p><b>assist</b> [1] - 272:21</p> <p><b>Assistant</b> [4] - 204:14, 204:14, 204:16, 204:17</p> <p><b>associating</b> [1] - 236:18</p> <p><b>assume</b> [1] - 225:17</p> <p><b>assumed</b> [1] - 267:2</p> <p><b>assumes</b> [1] - 266:24</p> <p><b>ATF</b> [1] - 204:19</p> <p><b>attach</b> [1] - 271:21</p> <p><b>attack</b> [1] - 272:8</p> <p><b>attempt</b> [3] - 280:16, 288:6, 289:3</p> <p><b>attempts</b> [1] - 222:13</p> <p><b>attention</b> [11] - 220:3, 228:13, 235:2, 241:8, 241:10, 248:22, 249:4, 261:9, 261:18, 261:19, 274:18</p> <p><b>attitude</b> [1] - 263:19</p> <p><b>attorney</b> [6] - 235:24, 263:2, 263:4, 263:9, 272:8</p> <p><b>Attorney</b> [2] - 204:14, 204:14</p> <p><b>attorneys</b> [2] - 268:3, 273:12</p> <p><b>authorities</b> [2] - 275:13, 290:9</p> <p><b>automatic</b> [1] - 275:6</p> <p><b>automobile</b> [2] - 219:18, 219:19</p> <p><b>available</b> [5] - 223:1, 244:21, 245:22, 256:13, 291:2</p> <p><b>Avenue</b> [2] - 223:6, 246:3</p> <p><b>avoid</b> [1] - 215:3</p> <p><b>aware</b> [2] - 223:23, 239:3</p>	<p><b>barrel</b> [1] - 242:13</p> <p><b>base</b> [2] - 256:21, 262:6</p> <p><b>Based</b> [1] - 283:4</p> <p><b>based</b> [5] - 263:21, 264:8, 264:21, 269:4, 280:2</p> <p><b>basis</b> [5] - 221:11, 245:19, 266:12, 268:6, 268:11</p> <p><b>bear</b> [2] - 281:2, 290:16</p> <p><b>becomes</b> [1] - 280:13</p> <p><b>beg</b> [1] - 223:3</p> <p><b>began</b> [2] - 265:15, 265:23</p> <p><b>begin</b> [3] - 285:23, 286:11, 290:6</p> <p><b>beginning</b> [3] - 232:20, 232:23, 282:14</p> <p><b>begins</b> [1] - 231:19</p> <p><b>behalf</b> [2] - 204:13, 204:15</p> <p><b>behavior</b> [1] - 271:2</p> <p><b>behind</b> [2] - 254:22, 260:10</p> <p><b>believability</b> [2] - 263:15, 270:14</p> <p><b>believes</b> [1] - 263:4</p> <p><b>bench</b> [4] - 225:12, 228:2, 282:19, 284:21</p> <p><b>best</b> [2] - 256:25, 259:5</p> <p><b>better</b> [1] - 246:21</p> <p><b>between</b> [7] - 229:19, 238:5, 238:7, 238:8, 241:5, 266:17, 274:20</p> <p><b>beyond</b> [25] - 229:1, 234:16, 234:18, 237:8, 242:22, 260:17, 260:22, 265:4, 265:14, 265:18, 266:1, 266:19, 269:7, 271:17, 273:23, 274:6, 276:5, 276:10, 276:14, 277:16, 278:23, 280:2, 288:7, 289:8, 289:10</p> <p><b>bias</b> [1] - 263:18</p> <p><b>big</b> [2] - 254:12, 254:14</p> <p><b>bit</b> [1] - 229:3</p> <p><b>black</b> [2] - 238:15, 256:3</p> <p><b>Block</b> [3] - 220:24, 229:10, 234:12</p> <p><b>block</b> [4] - 229:13, 239:17, 260:4</p> <p><b>board</b> [3] - 229:11, 254:3, 254:4</p> <p><b>Bob</b> [5] - 254:10, 254:11, 254:14, 254:25, 255:10</p> <p><b>body</b> [1] - 251:11</p> <p><b>bother</b> [2] - 239:22, 244:20</p> <p><b>bothered</b> [2] - 242:14, 249:4</p> <p><b>bottom</b> [1] - 220:3</p> <p><b>bounce</b> [1] - 244:9</p> <p><b>Bradley</b> [1] - 204:19</p> <p><b>break</b> [5] - 216:23, 248:6, 285:17, 289:19, 289:21</p> <p><b>breaking</b> [1] - 278:20</p> <p><b>brief</b> [1] - 229:5</p> <p><b>briefly</b> [1] - 232:19</p> <p><b>bring</b> [6] - 256:14, 256:24, 285:17, 286:8, 289:6, 290:16</p> <p><b>bringing</b> [3] - 256:11, 256:15, 256:16</p> <p><b>brought</b> [5] - 249:4, 256:24, 257:6, 264:14, 285:20</p> <p><b>bullet</b> [2] - 233:14, 233:18</p> <p><b>bullets</b> [4] - 239:16, 242:8, 242:11, 251:10</p>
<b>B</b>		
<p><b>backyards</b> [1] - 224:21</p> <p><b>bad</b> [2] - 257:19, 258:6</p> <p><b>Bailiff</b> [5] - 280:14, 280:22, 280:24, 284:22, 284:24</p> <p><b>Baltimore</b> [14] - 204:8, 204:24, 218:19, 218:21, 220:10, 224:3, 227:18, 234:12, 241:25, 244:17, 245:22, 246:2, 246:13, 246:16</p> <p><b>bar</b> [1] - 264:19</p>		

<p><b>bumped</b> [1] - 226:14</p> <p><b>burden</b> [14] - 228:10, 237:8, 242:22, 263:25, 264:3, 265:4, 265:5, 265:7, 265:20, 270:15, 271:17, 271:18, 273:15, 276:5</p> <p><b>bus</b> [1] - 290:1</p> <p><b>business</b> [2] - 275:23, 286:12</p> <p><b>buy</b> [1] - 248:12</p> <p><b>BY</b> [10] - 218:8, 220:16, 221:14, 221:22, 222:7, 222:12, 222:22, 292:12, 292:13, 292:14</p>	<p>284:10, 284:13</p> <p><b>changed</b> [2] - 238:4, 238:6</p> <p><b>changes</b> [1] - 217:8</p> <p><b>characterization</b> [1] - 256:18</p> <p><b>charge</b> [9] - 214:6, 214:15, 215:21, 232:21, 246:18, 273:25, 274:2, 274:15, 277:7</p> <p><b>CHARGE</b> [1] - 292:7</p> <p><b>charged</b> [17] - 232:21, 259:11, 259:12, 264:6, 264:13, 274:9, 275:1, 276:8, 276:12, 276:16, 276:21, 277:2, 277:13, 278:24, 279:5, 279:14</p> <p><b>charges</b> [3] - 265:10, 274:18, 274:23</p> <p><b>charts</b> [1] - 257:2</p> <p><b>chases</b> [1] - 239:22</p> <p><b>Check</b> [2] - 233:20, 234:14</p> <p><b>check</b> [4] - 232:5, 233:6, 257:13, 285:20</p> <p><b>checking</b> [1] - 257:14</p> <p><b>chief</b> [1] - 218:13</p> <p><b>choices</b> [1] - 281:12</p> <p><b>choose</b> [2] - 244:5, 248:21</p> <p><b>chosen</b> [1] - 243:18</p> <p><b>Circuit</b> [2] - 287:14, 288:1</p> <p><b>circulate</b> [1] - 286:1</p> <p><b>circumstances</b> [2] - 269:21, 270:24</p> <p><b>Circumstantial</b> [2] - 266:10, 266:15</p> <p><b>circumstantial</b> [4] - 266:17, 268:13, 268:22, 269:5</p> <p><b>City</b> [7] - 218:19, 218:21, 224:3, 227:18, 241:25, 244:17, 245:22</p> <p><b>civil</b> [4] - 233:2, 276:9, 276:19, 277:4</p> <p><b>claims</b> [1] - 257:11</p> <p><b>class</b> [1] - 276:1</p> <p><b>clean</b> [1] - 265:15</p> <p><b>clear</b> [3] - 259:25, 260:16, 261:10</p> <p><b>clearly</b> [1] - 269:17</p> <p><b>clerk</b> [1] - 217:7</p> <p><b>Clerk</b> [2] - 281:18, 281:23</p> <p><b>CLERK</b> [9] - 205:2, 217:15, 217:18, 227:10, 284:23, 284:25, 287:1, 287:3, 290:20</p> <p><b>client</b> [3] - 210:15, 216:13, 263:9</p> <p><b>clip</b> [1] - 242:8</p> <p><b>clock</b> [2] - 228:13, 235:1</p> <p><b>close</b> [6] - 224:13, 224:14, 225:25, 226:2, 261:9, 261:18</p> <p><b>closest</b> [4] - 235:16, 249:25, 258:17, 260:4</p> <p><b>closing</b> [2] - 228:12, 262:15</p> <p><b>CLOSING</b> [2] - 292:12, 292:13</p> <p><b>closings</b> [2] - 217:3, 217:4</p> <p><b>clothes</b> [1] - 251:11</p> <p><b>clothing</b> [1] - 242:15</p> <p><b>cloud</b> [1] - 246:3</p> <p><b>collective</b> [2] - 290:12, 290:14</p> <p><b>colored</b> [1] - 272:10</p> <p><b>combatting</b> [1] - 275:16</p> <p><b>coming</b> [7] - 234:3, 249:23, 253:7, 254:20, 254:22, 255:15, 258:3</p>	<p><b>commanding</b> [1] - 230:18</p> <p><b>COMMENCEMENT</b> [1] - 292:6</p> <p><b>comment</b> [1] - 245:19</p> <p><b>commerce</b> [13] - 233:23, 233:25, 234:13, 274:25, 275:7, 275:22, 276:2, 276:13, 278:25, 279:3, 279:11, 279:16</p> <p><b>commercial</b> [2] - 223:12, 223:13</p> <p><b>commits</b> [1] - 288:5</p> <p><b>committed</b> [4] - 274:11, 279:20, 279:21, 289:4</p> <p><b>committing</b> [1] - 274:9</p> <p><b>common</b> [14] - 234:10, 236:7, 241:19, 266:12, 267:19, 268:6, 268:24, 270:8, 270:21, 273:8, 288:5, 289:6, 289:9, 290:15</p> <p><b>common-sensical</b> [1] - 234:10</p> <p><b>commonly</b> [2] - 242:1, 278:19</p> <p><b>communicate</b> [3] - 280:14, 280:17, 280:18</p> <p><b>communicating</b> [1] - 280:22</p> <p><b>community</b> [1] - 264:12</p> <p><b>complete</b> [2] - 241:16, 263:19</p> <p><b>completing</b> [1] - 281:14</p> <p><b>complicated</b> [1] - 256:8</p> <p><b>complied</b> [1] - 230:20</p> <p><b>concede</b> [1] - 237:12</p> <p><b>conceded</b> [1] - 231:21</p> <p><b>concedes</b> [2] - 239:3, 248:8</p> <p><b>concept</b> [2] - 224:7, 289:14</p> <p><b>concern</b> [4] - 264:11, 273:20, 273:21, 279:23</p> <p><b>concerned</b> [2] - 262:3, 275:17</p> <p><b>conclude</b> [1] - 268:10</p> <p><b>concluded</b> [3] - 228:2, 228:4, 284:21</p> <p><b>conclusion</b> [1] - 268:20</p> <p><b>conclusively</b> [1] - 269:17</p> <p><b>conduct</b> [3] - 269:14, 279:19, 290:8</p> <p><b>conference</b> [5] - 225:11, 228:2, 263:10, 282:18, 284:21</p> <p><b>CONFERENCE</b>..... [1] - 292:7</p> <p><b>CONFERENCE</b>..... [1] - 292:16</p> <p><b>conferences</b> [1] - 263:6</p> <p><b>confidence</b> [1] - 290:13</p> <p><b>congregating</b> [1] - 224:20</p> <p><b>Congress</b> [2] - 275:8, 275:14</p> <p><b>Congressional</b> [1] - 208:23</p> <p><b>connect</b> [1] - 257:25</p> <p><b>connection</b> [1] - 277:6</p> <p><b>consciousness</b> [1] - 230:24</p> <p><b>consider</b> [15] - 262:1, 262:22, 263:23, 267:3, 267:15, 267:18, 271:1, 271:24, 272:24, 273:13, 274:7, 274:14, 277:9, 277:11, 283:22</p> <p><b>consideration</b> [6] - 264:16, 264:18, 265:19, 272:5, 280:4, 282:7</p> <p><b>considerations</b> [1] - 273:1</p> <p><b>considered</b> [7] - 267:10, 267:12, 274:3,</p>
<b>C</b>		
<p><b>cannot</b> [4] - 248:1, 280:3, 281:7, 288:9</p> <p><b>capsule</b> [4] - 240:1, 242:19, 250:20, 251:13</p> <p><b>car</b> [33] - 222:9, 228:21, 228:23, 229:9, 229:12, 230:5, 230:12, 231:9, 232:5, 232:6, 232:7, 232:8, 232:11, 232:13, 239:11, 240:7, 241:1, 241:2, 244:9, 248:6, 248:19, 249:9, 249:10, 249:11, 249:14, 249:17, 252:20, 254:5, 254:6, 255:16, 258:2, 258:4, 290:1</p> <p><b>card</b> [1] - 222:18</p> <p><b>career</b> [1] - 210:19</p> <p><b>careful</b> [2] - 261:19, 265:18</p> <p><b>carefully</b> [1] - 270:23</p> <p><b>carried</b> [2] - 279:7, 279:8</p> <p><b>cars</b> [1] - 238:19</p> <p><b>case</b> [65] - 211:16, 218:1, 219:1, 219:4, 221:3, 228:4, 228:7, 228:24, 229:6, 232:18, 232:20, 234:22, 235:22, 236:6, 238:14, 241:16, 244:16, 245:11, 245:23, 246:4, 246:5, 246:19, 251:6, 252:4, 253:13, 258:1, 258:3, 258:12, 258:14, 258:19, 258:24, 259:17, 259:25, 260:19, 260:21, 261:7, 263:3, 264:9, 264:10, 264:12, 265:7, 265:19, 266:20, 267:6, 267:21, 267:25, 271:6, 271:14, 272:2, 272:11, 272:16, 273:5, 273:9, 273:19, 280:1, 280:19, 280:23, 282:6, 282:16, 286:16, 288:1, 288:11, 290:2, 290:4</p> <p><b>cases</b> [3] - 223:19, 223:21, 245:14</p> <p><b>categories</b> [1] - 275:21</p> <p><b>caught</b> [1] - 230:22</p> <p><b>certain</b> [10] - 252:19, 252:23, 266:24, 268:1, 269:15, 270:13, 272:16, 274:19, 275:21, 289:4</p> <p><b>certainly</b> [5] - 239:13, 241:4, 247:21, 252:7, 253:23</p> <p><b>certificate</b> [2] - 219:17, 285:7</p> <p><b>Certified</b> [1] - 291:14</p> <p><b>certify</b> [1] - 291:15</p> <p><b>cetera</b> [1] - 214:25</p> <p><b>chair</b> [1] - 247:5</p> <p><b>chance</b> [4] - 244:5, 286:3, 286:6</p> <p><b>change</b> [5] - 226:8, 256:5, 282:9,</p>		

<p>277:8, 281:24, 283:2, 288:24  <b>considering</b> [1] - 268:25  <b>consistent</b> [2] - 234:21, 271:7  <b>consists</b> [1] - 267:6  <b>conspiracy</b> [2] - 246:25, 252:9  <b>constitution</b> [1] - 271:15  <b>consult</b> [2] - 282:3, 290:9  <b>contact</b> [1] - 284:8  <b>contained</b> [5] - 264:22, 267:3, 273:25, 274:10, 274:16  <b>contends</b> [1] - 275:25  <b>contesting</b> [1] - 241:3  <b>continue</b> [3] - 243:24, 265:24, 285:18  <b>continued</b> [1] - 204:10  <b>contradicted</b> [3] - 270:4, 271:8, 271:12  <b>Control</b> [1] - 242:3  <b>control</b> [5] - 275:11, 277:23, 278:1, 278:3, 278:9  <b>convenient</b> [1] - 224:23  <b>converted</b> [1] - 277:20  <b>convict</b> [5] - 236:20, 247:23, 266:18, 269:8, 276:15  <b>convicted</b> [9] - 232:25, 274:24, 275:3, 275:12, 276:2, 276:7, 276:17, 276:23, 280:5  <b>conviction</b> [20] - 207:14, 213:15, 213:16, 213:25, 214:5, 214:8, 214:9, 214:20, 215:23, 215:25, 216:1, 233:3, 276:10, 276:19, 277:1, 277:5, 277:7, 277:11, 282:11  <b>convictions</b> [2] - 215:19, 215:22  <b>convinced</b> [3] - 265:17, 265:25, 282:10  <b>copy</b> [2] - 205:10, 284:1  <b>corner</b> [6] - 238:23, 239:19, 241:3, 243:20, 243:25, 250:14  <b>corners</b> [1] - 240:4  <b>correct</b> [6] - 215:6, 221:1, 221:2, 223:2, 225:18, 291:15  <b>Correct</b> [1] - 227:6  <b>corrected</b> [1] - 238:4  <b>Correction</b> [1] - 215:4  <b>Corrections'</b> [1] - 213:11  <b>corroborate</b> [1] - 231:13  <b>corroborated</b> [1] - 255:13  <b>corroborates</b> [1] - 253:10  <b>corroboration</b> [2] - 255:12, 255:15  <b>cost</b> [2] - 246:17, 246:18  <b>could've</b> [1] - 246:9  <b>counsel</b> [8] - 225:8, 255:20, 255:21, 256:11, 257:16, 258:7, 287:13, 291:3  <b>Counsel</b> [10] - 205:9, 225:10, 228:14, 259:8, 259:18, 282:17, 284:7, 286:15, 287:6, 290:24  <b>Count</b> [1] - 281:11  <b>couple</b> [1] - 259:8  <b>course</b> [7] - 213:18, 228:10, 232:9, 280:24, 282:8, 287:23, 288:25  <b>court</b> [5] - 232:25, 271:9, 276:7, 280:13, 280:20</p>	<p><b>COURT</b> [168] - 204:1, 205:5, 205:9, 205:15, 205:18, 205:21, 205:23, 205:25, 206:2, 206:4, 206:6, 206:8, 206:10, 206:12, 206:14, 206:16, 206:18, 206:20, 206:22, 206:24, 207:1, 207:7, 207:12, 207:15, 207:18, 207:21, 207:23, 207:25, 208:2, 208:4, 208:6, 208:8, 208:10, 208:12, 208:14, 208:16, 208:18, 208:20, 208:23, 208:25, 209:4, 209:6, 209:8, 209:10, 209:12, 209:14, 209:16, 209:18, 209:23, 210:1, 210:4, 210:6, 210:15, 210:21, 211:3, 211:5, 211:9, 211:12, 211:18, 211:22, 211:24, 212:2, 212:5, 212:9, 212:12, 212:16, 212:19, 213:1, 213:7, 213:9, 213:13, 213:15, 213:18, 213:22, 214:3, 214:6, 214:8, 214:10, 214:17, 214:21, 215:3, 215:7, 215:10, 215:14, 215:18, 216:5, 216:8, 216:11, 216:20, 216:24, 217:4, 217:7, 217:10, 217:12, 217:14, 217:20, 217:22, 217:25, 220:14, 221:11, 221:13, 221:21, 222:6, 222:11, 222:21, 225:1, 225:5, 225:8, 225:10, 225:13, 225:16, 225:19, 225:22, 225:25, 226:2, 226:4, 226:6, 226:10, 226:12, 226:16, 226:18, 226:20, 226:22, 226:24, 227:2, 227:5, 227:7, 227:11, 227:20, 227:22, 227:24, 228:1, 228:3, 234:24, 249:19, 251:22, 256:20, 258:22, 261:3, 261:6, 282:20, 282:22, 282:24, 283:2, 283:8, 283:11, 283:19, 284:4, 284:7, 284:19, 284:22, 285:2, 285:10, 286:15, 286:20, 286:23, 286:25, 287:5, 287:16, 287:21, 288:3, 288:16, 288:19, 288:22, 290:22, 290:24, 291:5, 291:7  <b>Court</b> [20] - 205:3, 209:20, 211:8, 212:1, 216:18, 217:15, 217:18, 218:3, 234:1, 235:5, 242:21, 281:3, 285:1, 287:1, 287:3, 287:14, 287:25, 288:14, 290:20, 291:9  <b>Court's</b> [7] - 205:12, 205:15, 205:18, 205:23, 209:24, 223:3, 286:18  <b>courthouse</b> [1] - 244:15  <b>Courthouse</b> [1] - 204:23  <b>courtroom</b> [3] - 260:24, 267:22, 281:18  <b>Cousin</b> [14] - 254:10, 254:11, 254:12, 254:14, 254:20, 254:23, 254:25, 255:1, 255:2, 255:10, 255:11  <b>covered</b> [1] - 283:24  <b>creating</b> [1] - 246:16  <b>credibility</b> [8] - 211:10, 237:24, 239:20, 262:10, 263:15, 270:14, 272:8, 283:20  <b>credible</b> [1] - 270:5  <b>crime</b> [25] - 223:14, 223:15, 232:25, 233:7, 235:13, 235:15, 248:9, 249:15, 251:14, 257:1, 260:18, 264:6, 264:13, 274:10, 274:24, 275:3, 275:10, 275:16, 276:3, 276:7, 276:17, 276:24,</p>	<p>279:20  <b>Criminal</b> [1] - 204:6  <b>criminal</b> [4] - 210:19, 264:11, 265:7, 279:19  <b>criminals</b> [1] - 275:9  <b>criticize</b> [3] - 256:11, 256:13, 256:23  <b>criticized</b> [2] - 256:15  <b>Crosby</b> [1] - 204:19  <b>Cross</b> [1] - 225:1  <b>cross</b> [3] - 238:9, 257:18, 266:23  <b>cross-examination</b> [3] - 238:9, 257:18, 266:23  <b>crossed</b> [2] - 234:3, 279:6  <b>crowd</b> [9] - 235:19, 236:18, 239:19, 239:24, 240:2, 240:4, 240:6, 248:7, 250:14  <b>crowds</b> [3] - 239:18, 240:3  <b>CRR</b> [2] - 204:23, 291:20  <b>crucial</b> [1] - 255:11  <b>CSI</b> [2] - 244:13, 256:9  <b>CSO</b> [1] - 285:1  <b>cuff</b> [1] - 245:19  <b>cuffs</b> [1] - 230:21  <b>culminated</b> [1] - 248:4  <b>curious</b> [1] - 217:2  <b>custody</b> [5] - 213:11, 213:20, 214:15, 237:21, 286:7</p>
<b>D</b>		
<p><b>dark</b> [5] - 231:22, 235:19, 246:2, 248:17, 253:9  <b>Date</b> [1] - 291:20  <b>date</b> [17] - 213:3, 213:15, 213:16, 213:19, 214:5, 214:8, 214:9, 214:10, 214:14, 245:10, 274:19, 274:20, 274:21, 276:15, 277:16, 279:5, 281:13  <b>dealers</b> [1] - 224:5  <b>dealing</b> [2] - 224:13, 275:23  <b>deals</b> [2] - 210:14, 210:20  <b>decide</b> [8] - 252:23, 261:7, 262:11, 268:16, 269:11, 270:5, 270:9, 282:6  <b>decided</b> [1] - 263:8  <b>deciding</b> [5] - 266:3, 273:2, 273:14, 273:16, 277:12  <b>decision</b> [10] - 207:9, 228:8, 236:21, 251:19, 263:24, 264:7, 268:10, 270:21, 272:12, 272:23  <b>decision-making</b> [1] - 264:7  <b>declared</b> [1] - 233:15  <b>deduction</b> [1] - 268:20  <b>defend</b> [1] - 245:24  <b>DEFENDANT</b> [1] - 205:7  <b>defendant</b> [5] - 260:24, 265:5, 265:6, 266:3, 266:18  <b>Defendant</b> [85] - 204:7, 204:15, 207:3, 216:5, 228:19, 228:20, 229:21, 229:25, 230:2, 230:16, 230:19, 230:20, 231:16, 231:19, 232:1,</p>		

<p>232:13, 232:16, 232:21, 232:24, 233:8, 234:4, 234:19, 257:5, 258:1, 258:13, 258:16, 259:2, 259:7, 259:20, 260:1, 260:2, 260:17, 260:20, 260:21, 261:1, 264:13, 264:24, 265:1, 265:9, 265:11, 265:15, 265:21, 265:22, 269:7, 270:16, 271:14, 271:17, 271:19, 271:20, 271:24, 273:17, 273:25, 274:3, 274:4, 274:6, 274:9, 274:12, 274:23, 275:25, 276:6, 276:11, 276:16, 276:20, 276:22, 276:23, 277:1, 277:13, 277:17, 277:24, 278:2, 278:11, 278:16, 278:20, 278:24, 279:7, 279:10, 279:14, 279:18, 279:22, 280:2, 280:5, 281:11</p> <p><b>Defendant's</b> [17] - 210:11, 219:10, 220:13, 220:20, 228:25, 233:2, 233:24, 234:11, 260:16, 264:1, 265:3, 273:23, 276:9, 277:4, 278:1, 279:2, 287:24</p> <p><b>defender</b> [1] - 245:23</p> <p><b>Defender</b> [5] - 204:16, 204:17, 218:10, 218:12, 223:18</p> <p><b>Defender's</b> [3] - 218:15, 218:17, 224:4</p> <p><b>DEFENSE</b> [1] - 292:9</p> <p><b>Defense</b> [44] - 205:15, 205:18, 205:23, 206:4, 206:8, 206:10, 206:16, 206:18, 206:24, 207:1, 207:21, 207:23, 208:4, 208:6, 208:12, 208:14, 208:20, 208:21, 209:2, 209:8, 209:10, 209:16, 209:18, 210:1, 210:4, 210:7, 210:9, 212:7, 212:13, 212:24, 218:2, 218:3, 220:12, 220:14, 225:9, 225:13, 233:4, 238:17, 255:20, 255:21, 256:23, 268:15, 272:8</p> <p><b>DEFENSE</b>..... [1] - 292:13</p> <p><b>define</b> [4] - 288:6, 288:9, 289:3, 289:7</p> <p><b>defined</b> [1] - 277:19</p> <p><b>defining</b> [1] - 287:15</p> <p><b>definition</b> [6] - 233:18, 287:7, 288:18, 288:23, 289:17, 290:10</p> <p><b>degree</b> [6] - 214:7, 215:2, 215:8, 215:11, 215:25, 216:1</p> <p><b>deliberate</b> [2] - 262:2, 282:4</p> <p><b>deliberations</b> [23] - 236:24, 265:12, 265:24, 271:24, 279:24, 280:6, 280:9, 280:12, 280:13, 281:1, 282:8, 285:11, 285:14, 285:18, 285:23, 286:8, 286:11, 289:21, 289:22, 289:24, 290:3, 290:6, 290:7</p> <p><b>delivered</b> [1] - 222:19</p> <p><b>demand</b> [2] - 246:20, 246:21</p> <p><b>denied</b> [1] - 225:22</p> <p><b>denies</b> [1] - 266:25</p> <p><b>deny</b> [1] - 225:20</p> <p><b>Department</b> [6] - 215:3, 218:20, 218:22, 224:3, 242:1, 245:22</p> <p><b>department</b> [1] - 223:17</p> <p><b>depicted</b> [2] - 229:11, 229:21</p>	<p><b>deposited</b> [1] - 242:4</p> <p><b>derived</b> [1] - 237:1</p> <p><b>describe</b> [4] - 214:23, 223:8, 223:10, 238:15</p> <p><b>described</b> [3] - 231:23, 246:14, 275:6</p> <p><b>describes</b> [4] - 214:24, 239:5, 255:14, 274:2</p> <p><b>description</b> [1] - 243:4</p> <p><b>deserves</b> [2] - 272:15, 273:4</p> <p><b>deserving</b> [1] - 272:4</p> <p><b>designed</b> [2] - 275:14, 277:20</p> <p><b>detail</b> [1] - 229:4</p> <p><b>details</b> [1] - 253:25</p> <p><b>detection</b> [1] - 245:20</p> <p><b>determination</b> [4] - 273:9, 274:5, 288:7, 289:16</p> <p><b>determine</b> [5] - 238:14, 262:10, 273:21, 280:1, 289:9</p> <p><b>determined</b> [2] - 261:23, 262:12</p> <p><b>determining</b> [2] - 262:13, 270:22</p> <p><b>developed</b> [1] - 263:22</p> <p><b>dictionary</b> [1] - 290:9</p> <p><b>difference</b> [1] - 243:17</p> <p><b>different</b> [12] - 215:1, 230:5, 230:14, 241:6, 243:4, 255:6, 256:12, 256:14, 268:12, 271:9, 279:13</p> <p><b>differently</b> [1] - 231:8</p> <p><b>diminished</b> [1] - 215:22</p> <p><b>dinner</b> [2] - 255:3, 255:4</p> <p><b>dip</b> [2] - 230:13, 260:14</p> <p><b>dipping</b> [5] - 240:17, 253:4, 253:9, 255:14, 260:14</p> <p><b>dire</b> [1] - 244:2</p> <p><b>DIRECT</b> [1] - 218:7</p> <p><b>direct</b> [13] - 216:6, 254:1, 254:3, 259:1, 259:2, 266:4, 266:9, 266:16, 266:17, 268:13, 268:22, 269:5, 269:12</p> <p><b>Direct</b> [2] - 266:5, 292:11</p> <p><b>Directing</b> [1] - 220:3</p> <p><b>direction</b> [7] - 230:14, 231:20, 232:1, 238:19, 249:13, 253:16</p> <p><b>directions</b> [1] - 230:6</p> <p><b>directly</b> [1] - 230:11</p> <p><b>disbelieve</b> [1] - 248:21</p> <p><b>discard</b> [1] - 250:23</p> <p><b>discarded</b> [1] - 243:24</p> <p><b>discovered</b> [1] - 213:25</p> <p><b>discrepancy</b> [3] - 237:22, 238:1, 249:10</p> <p><b>discuss</b> [1] - 264:3</p> <p><b>discussed</b> [1] - 227:3</p> <p><b>discussions</b> [2] - 289:24, 290:3</p> <p><b>dispatch</b> [2] - 237:20, 243:10</p> <p><b>disputed</b> [4] - 266:11, 268:10, 277:8, 277:14</p> <p><b>disregard</b> [1] - 267:13</p> <p><b>disregarded</b> [1] - 267:23</p> <p><b>dissimilarity</b> [1] - 215:21</p> <p><b>distance</b> [2] - 238:6, 238:8</p> <p><b>distinction</b> [1] - 266:17</p>	<p><b>DISTRICT</b> [2] - 204:1, 204:1</p> <p><b>District</b> [5] - 205:2, 205:3, 218:24, 275:1, 275:2</p> <p><b>Division</b> [1] - 213:11</p> <p><b>DIVISION</b> [1] - 204:2</p> <p><b>DNA</b> [11] - 242:2, 242:4, 242:6, 242:9, 244:18, 244:20, 244:22, 251:12, 255:24, 256:6, 258:20</p> <p><b>DOC</b> [4] - 213:20, 214:25, 215:2, 215:12</p> <p><b>Docket</b> [1] - 204:6</p> <p><b>document</b> [2] - 219:12, 220:6</p> <p><b>Document</b> [4] - 211:8, 212:1, 212:20, 212:22</p> <p><b>documentation</b> [1] - 240:22</p> <p><b>documented</b> [1] - 237:20</p> <p><b>done</b> [7] - 219:4, 242:16, 244:20, 260:23, 269:16, 289:25, 290:4</p> <p><b>doubt</b> [31] - 211:15, 229:1, 234:16, 234:19, 237:9, 242:23, 255:18, 260:17, 260:23, 265:5, 265:14, 265:18, 266:1, 266:19, 269:7, 271:18, 273:23, 274:7, 276:5, 276:11, 276:15, 277:16, 278:23, 280:2, 287:8, 287:15, 288:8, 288:24, 288:25, 289:8, 289:11</p> <p><b>doubt'</b> [2] - 287:7, 288:24</p> <p><b>down</b> [22] - 225:5, 229:12, 229:15, 229:16, 229:18, 230:13, 231:15, 232:1, 232:15, 237:22, 238:23, 239:12, 240:2, 241:1, 245:9, 249:11, 250:2, 254:22, 260:6, 260:9, 286:4, 286:5</p> <p><b>Draper</b> [14] - 204:16, 212:22, 214:18, 215:12, 216:3, 218:2, 234:24, 235:3, 251:22, 252:3, 252:6, 254:2, 260:6, 287:22</p> <p><b>DRAPER</b> [93] - 205:8, 205:17, 205:20, 205:24, 206:5, 206:9, 206:11, 206:17, 206:19, 206:25, 207:4, 207:8, 207:13, 207:17, 207:22, 207:24, 208:5, 208:7, 208:13, 208:15, 208:21, 208:24, 209:3, 209:9, 209:11, 209:17, 209:19, 210:5, 210:9, 210:17, 210:22, 211:4, 211:6, 211:11, 211:14, 211:20, 211:23, 212:8, 212:14, 212:18, 212:23, 214:19, 214:22, 215:6, 215:13, 216:4, 216:7, 216:9, 216:16, 216:22, 217:6, 217:13, 217:21, 218:3, 218:8, 220:12, 220:16, 221:14, 221:22, 222:7, 222:12, 222:22, 223:3, 224:24, 225:2, 225:9, 225:15, 225:18, 226:3, 226:17, 226:19, 226:21, 227:3, 227:6, 227:12, 227:21, 227:23, 227:25, 235:4, 235:8, 249:20, 256:18, 282:25, 283:4, 283:10, 283:12, 284:3, 284:6, 284:18, 287:23, 288:13, 288:17, 291:4</p> <p><b>DRAPER</b>..... [1] - 292:11</p> <p><b>draw</b> [11] - 258:9, 262:11, 267:19, 268:14, 268:15, 268:17, 268:21, 269:1, 274:17</p>
--	---	--



<p><b>drawing</b> [4] - 241:10, 268:18, 268:23, 270:8</p> <p><b>drawn</b> [5] - 241:8, 268:13, 269:6, 269:23, 271:22</p> <p><b>draws</b> [1] - 230:17</p> <p><b>driven</b> [1] - 248:19</p> <p><b>driving</b> [1] - 248:6</p> <p><b>drop</b> [8] - 232:7, 234:17, 249:24, 259:18, 259:21, 259:23, 286:3, 286:4</p> <p><b>dropped</b> [3] - 232:4, 232:8, 232:17</p> <p><b>drove</b> [2] - 239:7, 241:1</p> <p><b>drug</b> [12] - 223:21, 223:24, 223:25, 224:4, 235:19, 236:8, 239:24, 246:22, 247:1, 248:7, 248:9, 248:10</p> <p><b>drug-infested</b> [3] - 235:19, 236:8, 248:9</p> <p><b>drugs</b> [8] - 224:12, 224:16, 224:18, 236:9, 246:2, 247:23, 248:12, 250:19</p> <p><b>due</b> [1] - 283:17</p> <p><b>DULY</b> [1] - 218:6</p> <p><b>During</b> [3] - 268:3, 273:11, 282:8</p> <p><b>during</b> [10] - 216:23, 219:6, 221:3, 262:17, 262:18, 280:13, 285:10, 285:14, 286:8, 286:9</p> <p><b>dust</b> [4] - 241:22, 241:24, 245:3</p> <p><b>dusted</b> [2] - 245:7, 256:3</p> <p><b>duties</b> [1] - 218:21</p> <p><b>duty</b> [10] - 261:7, 261:21, 261:22, 263:2, 263:5, 263:17, 263:19, 265:7, 279:24, 282:3</p>	<p><b>emerging</b> [1] - 239:6</p> <p><b>emphasize</b> [2] - 266:21, 274:13</p> <p><b>empirical</b> [1] - 245:16</p> <p><b>employed</b> [3] - 218:9, 218:11, 272:3</p> <p><b>employee</b> [2] - 214:25, 215:2</p> <p><b>empowered</b> [1] - 289:15</p> <p><b>encounter</b> [2] - 241:5, 289:14</p> <p><b>end</b> [6] - 228:21, 228:23, 243:22, 252:7, 261:13, 289:21</p> <p><b>ends</b> [1] - 254:11</p> <p><b>enforced</b> [1] - 275:19</p> <p><b>enforcement</b> [10] - 227:13, 227:16, 227:17, 264:11, 272:2, 272:3, 272:9, 272:13, 273:20, 275:15</p> <p><b>engage</b> [1] - 290:7</p> <p><b>enter</b> [3] - 261:6, 279:23, 280:6</p> <p><b>enters</b> [2] - 217:24, 288:21</p> <p><b>entire</b> [1] - 271:19</p> <p><b>entirely</b> [1] - 267:22</p> <p><b>entitled</b> [8] - 204:10, 260:20, 260:21, 260:24, 261:1, 264:2, 264:17, 291:17</p> <p><b>entitles</b> [1] - 264:15</p> <p><b>entry</b> [1] - 243:8</p> <p><b>equally</b> [1] - 264:5</p> <p><b>Equally</b> [1] - 264:12</p> <p><b>equals</b> [1] - 264:19</p> <p><b>error</b> [1] - 211:19</p> <p><b>essentially</b> [1] - 219:17</p> <p><b>establish</b> [2] - 269:12, 279:4</p> <p><b>established</b> [6] - 240:21, 266:13, 268:7, 268:22, 269:20, 274:21</p> <p><b>et</b> [1] - 214:25</p> <p><b>evaluating</b> [1] - 270:14</p> <p><b>evening</b> [2] - 236:22, 237:7</p> <p><b>evening's</b> [1] - 236:15</p> <p><b>event</b> [1] - 254:12</p> <p><b>events</b> [2] - 269:15, 269:22</p> <p><b>Eventually</b> [1] - 230:19</p> <p><b>eventually</b> [1] - 230:19</p> <p><b>everyday</b> [2] - 270:22, 289:14</p> <p><b>evidence</b> [127] - 210:23, 216:12, 220:13, 225:16, 228:4, 228:6, 228:24, 232:18, 234:22, 235:25, 236:5, 236:11, 236:13, 236:24, 237:1, 241:17, 242:2, 242:10, 245:7, 245:11, 245:16, 246:4, 246:5, 246:11, 246:19, 247:9, 247:14, 247:16, 247:17, 251:6, 251:10, 251:12, 256:12, 256:22, 256:25, 257:1, 257:5, 258:12, 259:2, 259:13, 259:15, 259:16, 259:19, 259:25, 261:20, 262:10, 262:14, 262:17, 262:18, 262:19, 262:21, 262:23, 263:4, 263:10, 263:13, 263:14, 263:16, 263:21, 263:22, 264:9, 264:22, 265:1, 265:8, 265:19, 266:2, 266:4, 266:5, 266:9, 266:10, 266:15, 266:16, 266:17, 266:20, 266:22, 267:1, 267:5, 267:6, 267:7, 267:10, 267:12, 267:15, 267:16, 267:17, 267:18, 267:20, 267:22, 268:14,</p>	<p>268:17, 268:19, 268:23, 268:25, 269:5, 269:6, 269:25, 270:7, 270:9, 270:17, 270:24, 271:8, 271:16, 272:13, 272:22, 273:5, 273:16, 273:22, 274:2, 274:4, 274:7, 274:8, 274:11, 274:12, 274:14, 279:12, 280:1, 280:3, 282:7, 282:12, 284:10, 285:12, 285:13, 285:19</p> <p><b>Evidence</b> [1] - 242:3</p> <p><b>evident</b> [1] - 261:17</p> <p><b>exactly</b> [2] - 231:17, 258:2</p> <p><b>Examination</b> [1] - 292:11</p> <p><b>EXAMINATION</b> [1] - 218:7</p> <p><b>examination</b> [3] - 238:9, 257:18, 266:23</p> <p><b>examine</b> [1] - 286:9</p> <p><b>examined</b> [2] - 245:10, 245:13</p> <p><b>examiner</b> [5] - 233:15, 234:5, 245:9, 252:13, 252:15</p> <p><b>examining</b> [2] - 244:25, 270:9</p> <p><b>example</b> [1] - 266:22</p> <p><b>exceeding</b> [5] - 233:1, 275:4, 276:8, 276:18, 276:25</p> <p><b>Exceptions</b> [3] - 282:20, 282:22, 282:24</p> <p><b>EXCEPTIONS</b> [1] - 292:16</p> <p><b>exclusive</b> [2] - 262:9, 262:24</p> <p><b>exclusively</b> [1] - 279:25</p> <p><b>excused</b> [3] - 225:7, 286:14, 290:23</p> <p><b>Excused.....</b> [1] - 292:11</p> <p><b>exercise</b> [3] - 268:23, 278:3, 278:9</p> <p><b>Exhibit</b> [6] - 219:10, 220:13, 220:21, 229:16, 238:17, 242:7</p> <p><b>exhibits</b> [5] - 262:21, 267:7, 267:11, 274:22, 284:16</p> <p><b>Exhibits</b> [1] - 267:9</p> <p><b>exist</b> [1] - 268:11</p> <p><b>existence</b> [2] - 266:13, 268:7</p> <p><b>exists</b> [2] - 268:11, 277:9</p> <p><b>expect</b> [1] - 223:16</p> <p><b>expected</b> [1] - 290:16</p> <p><b>expel</b> [1] - 277:20</p> <p><b>experience</b> [14] - 218:18, 223:4, 223:8, 223:17, 224:2, 266:12, 267:19, 268:6, 269:3, 270:8, 288:6, 289:6, 289:9, 290:15</p> <p><b>experienced</b> [1] - 272:21</p> <p><b>experiences</b> [1] - 270:22</p> <p><b>expert</b> [6] - 233:15, 242:13, 247:13, 272:18, 273:3, 273:6</p> <p><b>expert's</b> [1] - 272:24</p> <p><b>explain</b> [1] - 288:4</p> <p><b>explained</b> [2] - 233:4, 241:21</p> <p><b>explanation</b> [2] - 244:22, 248:3</p> <p><b>explanations</b> [1] - 269:18</p> <p><b>explosion</b> [1] - 233:14</p> <p><b>explosive</b> [1] - 277:21</p> <p><b>express</b> [1] - 272:17</p> <p><b>extent</b> [1] - 271:8</p> <p><b>eyewitness</b> [6] - 256:10, 257:1, 283:5,</p>
<b>E</b>		
<p><b>ease</b> [1] - 275:8</p> <p><b>easily</b> [1] - 238:1</p> <p><b>Eastern</b> [1] - 218:23</p> <p><b>easy</b> [3] - 237:25, 253:5, 253:6</p> <p><b>EDWARDS</b> [1] - 227:14</p> <p><b>Edwards</b> [1] - 204:17</p> <p><b>effect</b> [5] - 215:20, 227:15, 263:14, 263:16, 282:11</p> <p><b>efficiently</b> [1] - 286:15</p> <p><b>effort</b> [2] - 222:16, 289:7</p> <p><b>efforts</b> [2] - 222:23, 250:22</p> <p><b>either</b> [9] - 210:7, 224:12, 239:6, 243:15, 248:19, 249:7, 252:4, 268:22, 278:2</p> <p><b>Either</b> [1] - 288:17</p> <p><b>electing</b> [1] - 286:12</p> <p><b>electronically</b> [1] - 210:13</p> <p><b>element</b> [15] - 233:6, 233:7, 233:11, 233:20, 233:21, 234:1, 234:14, 276:14, 277:7, 277:14, 277:15, 278:12, 278:15, 278:22, 279:4</p> <p><b>Element</b> [1] - 233:19</p> <p><b>elements</b> [5] - 232:24, 234:15, 234:16, 255:11, 276:5</p> <p><b>eliminated</b> [1] - 284:11</p> <p><b>emerge</b> [1] - 248:17</p> <p><b>emerged</b> [2] - 236:3, 249:7</p>		

283:7, 283:8, 283:17	<b>final</b> [4] - 261:6, 261:20, 263:19, 284:11 <b>Final</b> [1] - 210:2 <b>finalize</b> [1] - 227:8 <b>fine</b> [1] - 231:2 <b>fingerprint</b> [4] - 242:10, 252:13, 252:14, 256:4 <b>fingerprinting</b> [1] - 244:18 <b>fingerprints</b> [8] - 241:18, 244:19, 245:1, 245:15, 252:15, 255:24, 258:20 <b>finished</b> [1] - 233:16 <b>firearm</b> [43] - 232:22, 233:8, 233:11, 233:13, 233:14, 233:19, 233:20, 233:22, 233:24, 234:2, 234:5, 234:6, 234:7, 234:20, 235:21, 236:16, 236:20, 239:21, 239:22, 239:23, 245:10, 251:7, 260:18, 275:5, 276:12, 276:16, 276:21, 277:18, 277:19, 277:25, 278:2, 278:10, 278:12, 278:13, 278:16, 278:18, 278:23, 279:2, 279:5, 279:11, 279:13, 279:15 <b>firearms</b> [8] - 234:7, 242:12, 245:9, 275:9, 275:12, 275:22, 275:23, 276:1 <b>fired</b> [2] - 233:17, 257:12 <b>First</b> [1] - 276:6 <b>first</b> [17] - 214:7, 214:20, 214:22, 214:24, 214:25, 215:2, 215:8, 215:11, 215:25, 216:1, 218:23, 226:9, 226:11, 228:11, 232:24, 276:14, 286:12 <b>first-degree</b> [5] - 214:7, 215:8, 215:11, 215:25, 216:1 <b>five</b> [10] - 218:23, 218:24, 226:6, 226:14, 226:16, 226:20, 236:1, 238:11, 249:8, 250:6 <b>Five</b> [4] - 226:21, 226:23, 249:19, 258:22 <b>five-minute</b> [2] - 226:6, 226:16 <b>Flex</b> [8] - 235:10, 235:11, 237:9, 237:12, 241:14, 243:14, 246:14, 248:6 <b>FOCR</b> [1] - 204:23 <b>focus</b> [2] - 236:8, 243:24 <b>folks</b> [5] - 217:12, 217:20, 226:16, 286:25, 288:10 <b>followed</b> [1] - 261:17 <b>following</b> [7] - 225:11, 233:2, 276:4, 276:9, 276:19, 277:4, 282:18 <b>fool</b> [1] - 244:12 <b>FOR</b> [2] - 204:1, 292:8 <b>forbidden</b> [1] - 280:22 <b>foregoing</b> [1] - 291:15 <b>foreign</b> [1] - 276:13 <b>forensic</b> [1] - 241:17 <b>forensics</b> [1] - 245:2 <b>foreperson</b> [10] - 280:11, 280:15, 281:14, 281:16, 281:22, 286:13, 289:1 <b>forever</b> [1] - 254:14 <b>forget</b> [1] - 236:9 <b>form</b> [9] - 212:13, 212:15, 212:16, 212:23, 212:24, 281:9, 281:14, 281:17, 285:7 <b>formal</b> [1] - 290:25	<b>former</b> [1] - 235:11 <b>forms</b> [1] - 284:16 <b>formulating</b> [1] - 287:11 <b>forth</b> [1] - 277:17 <b>forward</b> [1] - 258:13 <b>founders</b> [1] - 290:13 <b>four</b> [2] - 248:5, 289:24 <b>Fourteen</b> [1] - 208:6 <b>fourth</b> [6] - 237:5, 237:9, 237:10, 243:19 <b>Fourth</b> [2] - 287:13, 288:1 <b>Franklin</b> [1] - 204:16 <b>free</b> [6] - 261:14, 285:8, 285:11, 285:17, 286:3, 290:22 <b>FROM</b> [1] - 292:17 <b>front</b> [7] - 214:14, 216:21, 220:24, 251:2, 286:4, 286:5 <b>full</b> [3] - 228:12, 235:2, 283:2 <b>fuming</b> [1] - 245:21 <b>function</b> [1] - 279:25
<b>F</b>	<b>G</b>	<b>Garfield</b> [41] - 219:2, 228:19, 228:25, 229:21, 235:8, 235:15, 235:16, 235:20, 236:2, 236:11, 236:22, 237:13, 239:1, 239:5, 240:16, 241:8, 241:12, 242:4, 242:6, 242:14, 242:18, 242:23, 242:25, 243:13, 244:11, 245:25, 246:5, 247:1, 247:4, 247:14, 247:20, 248:4, 248:18, 249:8, 250:1, 251:7, 251:20, 251:25, 252:17, 275:2, 281:11 <b>GARFIELD</b> [2] - 204:7, 292:2 <b>general</b> [3] - 211:23, 266:16, 275:20 <b>generated</b> [1] - 210:18 <b>gentlemen</b> [22] - 224:10, 228:16, 228:23, 229:2, 232:19, 233:21, 234:20, 235:6, 245:15, 246:10, 251:24, 253:14, 253:23, 254:1, 254:8, 255:24, 256:25, 258:5, 259:16, 259:19, 260:19, 290:17 <b>George</b> [1] - 204:14 <b>Giordano</b> [3] - 204:23, 291:14, 291:20 <b>given</b> [6] - 228:7, 261:16, 262:19, 264:16, 271:4, 283:23 <b>Glanville</b> [62] - 228:18, 228:20, 228:21, 229:7, 229:20, 230:10, 230:11, 230:12, 230:15, 230:16, 231:7, 231:12, 231:16, 231:23, 231:25, 232:3, 232:4, 232:13, 232:14, 233:8, 234:16, 237:14, 238:16, 238:21, 239:5, 239:9, 239:10, 239:14, 239:25, 240:13, 240:24, 241:4, 241:5, 241:7, 241:10, 241:11, 241:12, 243:9, 243:21, 243:23, 248:14, 248:25, 249:6, 249:21, 249:23, 249:25, 250:4, 250:9, 250:25, 251:24, 252:8, 253:3, 253:10, 253:14, 255:13, 255:14, 259:4, 259:19, 260:1, 260:8, 260:10



<p><b>Glanville's</b> [6] - 229:13, 237:15, 237:24, 238:13, 238:19, 239:20</p> <p><b>gloves</b> [1] - 239:14</p> <p><b>Glue</b> [2] - 241:25, 245:21</p> <p><b>Gold</b> [10] - 220:10, 220:18, 220:25, 223:5, 223:13, 229:10, 234:12, 247:22, 248:8</p> <p><b>Government</b> [105] - 204:13, 205:12, 205:21, 205:25, 206:2, 206:6, 206:12, 206:13, 206:14, 206:20, 206:22, 207:13, 207:19, 207:25, 208:2, 208:8, 208:10, 208:16, 208:17, 208:18, 208:19, 209:4, 209:6, 209:12, 209:14, 209:23, 210:2, 210:7, 212:3, 212:9, 213:1, 213:23, 213:24, 214:23, 215:1, 215:7, 215:11, 215:15, 215:24, 218:1, 225:3, 225:19, 225:23, 228:9, 228:10, 228:11, 233:4, 233:23, 234:15, 234:18, 236:7, 237:8, 237:12, 241:18, 241:20, 243:2, 243:18, 244:6, 244:12, 244:14, 244:16, 246:21, 246:24, 246:25, 247:9, 250:4, 251:23, 256:11, 256:14, 257:6, 260:22, 263:24, 264:3, 264:10, 264:15, 264:17, 264:19, 265:13, 265:20, 265:25, 268:14, 270:16, 273:12, 273:14, 273:18, 274:6, 275:25, 276:4, 276:10, 276:14, 276:22, 277:15, 278:5, 278:19, 278:22, 279:1, 279:4, 279:6, 279:8, 279:10, 282:20, 283:15, 287:10, 289:10, 291:5</p> <p><b>Government's</b> [12] - 212:14, 229:16, 235:22, 236:1, 236:6, 237:2, 242:7, 242:8, 242:22, 283:4, 283:6, 283:16</p> <p><b>GOVERNMENT</b>..... [1] - 292:14</p> <p><b>GOVERNMENT</b>..... [1] - 292:12</p> <p><b>grand</b> [2] - 246:25, 252:9</p> <p><b>Grand</b> [1] - 274:25</p> <p><b>graphite</b> [2] - 245:3, 245:6</p> <p><b>graphs</b> [1] - 257:2</p> <p><b>grass</b> [1] - 260:4</p> <p><b>grassy</b> [1] - 231:15</p> <p><b>great</b> [1] - 246:15</p> <p><b>greater</b> [2] - 264:16, 272:5</p> <p><b>ground</b> [5] - 230:18, 230:19, 232:2, 244:9, 258:16</p> <p><b>grounds</b> [1] - 272:9</p> <p><b>group</b> [1] - 289:25</p> <p><b>guess</b> [2] - 217:1, 268:9</p> <p><b>guesswork</b> [1] - 268:19</p> <p><b>guilt</b> [10] - 228:25, 237:8, 260:16, 260:22, 265:4, 265:18, 266:19, 269:7, 273:23, 274:4</p> <p><b>guilty</b> [27] - 213:10, 234:19, 234:22, 236:14, 236:16, 251:5, 251:20, 260:18, 260:25, 265:1, 265:3, 265:13, 265:21, 266:1, 266:3, 271:17, 273:17, 274:6, 276:6, 279:18, 280:2, 281:6,</p>	<p>281:12, 281:13, 289:10</p> <p><b>gun</b> [134] - 221:9, 223:19, 224:16, 224:18, 228:19, 228:20, 228:21, 228:22, 230:1, 230:7, 230:9, 230:13, 230:22, 232:4, 232:8, 232:14, 232:15, 233:9, 233:16, 233:17, 233:19, 234:9, 234:10, 234:17, 234:18, 235:13, 235:17, 236:2, 237:13, 239:13, 240:7, 240:16, 240:23, 241:11, 241:12, 241:22, 241:23, 242:2, 242:3, 242:6, 242:14, 242:19, 242:23, 243:21, 244:19, 244:20, 245:1, 245:12, 246:6, 247:8, 247:10, 247:15, 247:17, 247:18, 247:24, 248:19, 248:22, 248:24, 249:1, 249:2, 249:13, 249:17, 249:24, 250:6, 250:9, 250:10, 250:12, 250:13, 250:17, 251:9, 251:10, 252:2, 252:15, 253:3, 253:6, 253:15, 253:17, 253:20, 253:21, 255:13, 255:16, 257:3, 257:4, 257:5, 257:7, 257:12, 257:13, 258:1, 258:2, 258:10, 258:13, 258:16, 259:1, 259:2, 259:5, 259:6, 259:7, 259:9, 259:10, 259:12, 259:13, 259:14, 259:18, 259:21, 259:23, 259:24, 260:2, 260:5, 260:6, 260:7, 260:11, 260:12, 260:13, 260:14, 277:13, 285:21, 285:25, 286:1</p> <p><b>gunpoint</b> [1] - 232:3</p> <p><b>guns</b> [6] - 224:12, 224:18, 246:1, 246:12, 246:15, 246:17</p> <p><b>gunshot</b> [10] - 242:13, 242:15, 242:18, 251:11, 257:8, 257:9, 257:10, 257:11, 257:13, 257:14</p> <p><b>guy</b> [3] - 252:22, 258:17, 258:18</p>	<p>212:4, 212:10, 212:17, 212:21, 212:25, 213:5, 213:8, 213:10, 213:14, 213:16, 213:20, 214:1, 214:4, 214:7, 214:9, 214:11, 215:9, 215:16, 217:1, 217:5, 217:9, 217:11, 221:10, 221:12, 221:20, 222:5, 222:10, 222:20, 225:4, 225:21, 225:24, 226:1, 226:5, 226:8, 226:11, 226:14, 226:23, 227:1, 228:15, 228:18, 251:24, 256:23, 258:23, 282:21, 282:23, 286:17, 287:11, 287:18, 288:11, 291:6</p> <p><b>Hazel</b> [3] - 204:14, 212:20, 234:24</p> <p><b>hear</b> [14] - 218:2, 231:10, 231:16, 231:17, 231:18, 234:1, 243:17, 259:21, 261:4, 271:3, 283:23, 287:9, 287:22</p> <p><b>heard</b> [36] - 214:17, 214:19, 227:17, 229:4, 229:6, 229:7, 231:4, 231:24, 233:14, 235:11, 235:22, 235:23, 236:1, 237:1, 237:6, 237:10, 237:11, 237:12, 238:7, 239:17, 243:3, 244:1, 244:8, 244:10, 257:17, 257:20, 259:16, 259:18, 261:20, 266:6, 267:21, 268:3, 272:1, 273:11, 274:11</p> <p><b>hearing</b> [5] - 250:20, 251:3, 259:23, 263:7, 263:11</p> <p><b>hearing-impaired</b> [1] - 251:3</p> <p><b>hears</b> [5] - 241:9, 249:24, 266:8</p> <p><b>Hearsay</b> [1] - 221:12</p> <p><b>heavily</b> [1] - 223:14</p> <p><b>heavy</b> [1] - 244:6</p> <p><b>heck</b> [1] - 211:19</p> <p><b>heft</b> [2] - 285:22, 285:25</p> <p><b>held</b> [3] - 225:11, 277:24, 282:18</p> <p><b>help</b> [2] - 245:24, 281:9</p> <p><b>helpful</b> [1] - 275:12</p> <p><b>heroin</b> [8] - 240:1, 242:19, 250:20, 250:23, 251:4, 251:9, 251:13, 252:1</p> <p><b>hesitate</b> [1] - 282:9</p> <p><b>Hi</b> [3] - 234:7, 275:5</p> <p><b>Hi-Point</b> [3] - 234:7, 275:5</p> <p><b>hide</b> [1] - 257:23</p> <p><b>high</b> [8] - 223:14, 223:15, 235:20, 236:16, 248:9, 250:19, 251:15, 251:17</p> <p><b>high-crime</b> [1] - 248:9</p> <p><b>himself</b> [7] - 238:4, 238:7, 238:8, 245:21, 249:5, 259:5, 279:7</p> <p><b>hit</b> [4] - 244:9, 254:14, 254:23, 254:25</p> <p><b>hitting</b> [2] - 254:11, 255:10</p> <p><b>holding</b> [8] - 232:3, 253:15, 253:19, 255:25, 256:1, 257:5, 257:6</p> <p><b>Homicide</b> [1] - 218:24</p> <p><b>honest</b> [5] - 253:2, 253:5, 253:11, 282:11, 287:12</p> <p><b>Honor</b> [74] - 205:8, 205:14, 205:17, 205:20, 205:22, 206:1, 206:3, 206:5, 206:7, 206:15, 206:19, 206:21, 206:23, 207:22, 208:1, 208:3, 208:5, 208:9, 208:11, 208:21, 208:24, 209:5, 209:7, 209:11, 209:13, 209:15, 210:5,</p>
<b>H</b>		
<p><b>Hale</b> [1] - 204:14</p> <p><b>hand</b> [16] - 219:9, 228:19, 230:1, 230:7, 230:13, 231:21, 232:15, 233:9, 233:13, 234:11, 240:23, 250:2, 250:18, 253:19, 256:5, 284:23</p> <p><b>handgun</b> [5] - 221:15, 222:3, 222:9, 251:14, 251:16</p> <p><b>handle</b> [5] - 242:7, 242:8, 244:5, 245:4, 286:6</p> <p><b>handled</b> [2] - 242:7, 242:18</p> <p><b>handling</b> [1] - 245:7</p> <p><b>hands</b> [4] - 242:15, 245:7, 257:13, 257:14</p> <p><b>Hargrave</b> [12] - 219:23, 219:24, 220:7, 221:4, 221:7, 221:18, 221:24, 222:4, 222:8, 222:14, 222:25, 240:6</p> <p><b>harped</b> [1] - 255:21</p> <p><b>Harris</b> [3] - 244:21, 245:14, 256:2</p> <p><b>HAZEL</b> [73] - 205:14, 205:22, 206:1, 206:3, 206:7, 206:13, 206:15, 206:21, 206:23, 207:20, 208:1, 208:3, 208:9, 208:11, 208:17, 208:19, 209:5, 209:7, 209:13, 209:15, 209:24, 210:3, 211:7,</p>		

<p>210:9, 211:4, 211:11, 212:4, 212:8, 212:11, 212:17, 212:25, 213:5, 214:1, 215:6, 215:13, 215:17, 217:1, 217:2, 217:6, 217:13, 217:21, 220:12, 224:25, 225:4, 225:6, 225:9, 225:15, 225:18, 225:21, 225:24, 226:8, 226:19, 227:23, 228:15, 235:4, 249:20, 256:19, 258:23, 282:21, 282:23, 284:3, 284:6, 284:18, 286:17, 286:18, 287:12, 287:23, 288:13, 291:4, 291:6</p> <p><b>Honorable</b> [8] - 204:11, 205:4, 217:15, 217:18, 287:1, 287:3, 290:20, 291:9</p> <p><b>hope</b> [2] - 248:14, 252:7</p> <p><b>hopefully</b> [1] - 257:24</p> <p><b>hour</b> [1] - 285:18</p> <p><b>house</b> [1] - 222:18</p>	<p><b>indicate</b> [5] - 213:23, 219:21, 220:6, 262:25, 263:13</p> <p><b>indicated</b> [2] - 263:12, 267:14</p> <p><b>indicted</b> [1] - 264:24</p> <p><b>Indictment</b> [16] - 264:25, 265:2, 274:1, 274:10, 274:16, 274:17, 274:18, 274:21, 274:23, 274:25, 276:21, 277:2, 277:17, 279:5, 281:12</p> <p><b>individual</b> [4] - 236:10, 247:18, 248:23, 282:5</p> <p><b>individuals</b> [1] - 264:19</p> <p><b>indulgence</b> [1] - 223:3</p> <p><b>infer</b> [7] - 236:14, 245:11, 246:23, 266:11, 268:6, 279:15, 279:18</p> <p><b>inference</b> [8] - 215:4, 258:8, 258:9, 258:25, 268:5, 268:9, 268:20, 271:22</p> <p><b>inferences</b> [10] - 262:11, 267:20, 268:12, 268:15, 268:16, 268:18, 268:23, 269:2, 269:6, 269:23</p> <p><b>inferred</b> [1] - 269:13</p> <p><b>infested</b> [3] - 235:19, 236:8, 248:9</p> <p><b>influence</b> [2] - 279:24, 280:5</p> <p><b>inform</b> [2] - 207:1, 216:13</p> <p><b>information</b> [3] - 213:3, 281:7, 281:8</p> <p><b>initial</b> [2] - 243:10, 244:2</p> <p><b>initials</b> [1] - 233:16</p> <p><b>injustice</b> [1] - 282:5</p> <p><b>innocence</b> [4] - 243:1, 264:2, 265:16, 265:22</p> <p><b>innocent</b> [8] - 236:25, 237:18, 247:3, 260:22, 265:9, 265:11, 270:18, 271:20</p> <p><b>instead</b> [2] - 210:10, 239:22</p> <p><b>instruct</b> [9] - 216:18, 217:3, 217:4, 217:10, 261:8, 261:19, 261:21, 265:10, 277:6</p> <p><b>instructed</b> [2] - 273:17, 283:19</p> <p><b>instruction</b> [13] - 209:19, 209:20, 210:2, 210:10, 211:15, 211:21, 211:24, 212:3, 216:14, 216:20, 227:4, 227:13, 288:14</p> <p><b>Instruction</b> [8] - 205:12, 205:16, 205:19, 210:11, 210:14, 210:19, 211:14, 227:14</p> <p><b>INSTRUCTIONS</b> [1] - 292:15</p> <p><b>instructions</b> [34] - 205:10, 207:2, 207:5, 209:22, 210:12, 212:8, 212:10, 227:3, 228:6, 231:16, 231:17, 231:19, 231:25, 234:2, 259:20, 261:12, 261:13, 261:22, 261:25, 262:2, 262:18, 264:23, 268:4, 273:24, 280:8, 283:5, 283:13, 283:21, 283:24, 283:25, 284:11, 284:13, 284:15, 285:19</p> <p><b>insurance</b> [1] - 285:3</p> <p><b>intact</b> [1] - 285:4</p> <p><b>intend</b> [1] - 215:16</p> <p><b>intent</b> [4] - 208:23, 269:9, 269:16, 269:19</p> <p><b>intention</b> [3] - 278:3, 278:9, 278:11</p> <p><b>interest</b> [2] - 271:6, 272:10</p>	<p><b>interesting</b> [3] - 244:4, 245:2, 256:9</p> <p><b>interfere</b> [1] - 264:7</p> <p><b>interpretation</b> [1] - 243:13</p> <p><b>interpretations</b> [1] - 237:2</p> <p><b>interpreted</b> [1] - 283:17</p> <p><b>intersection</b> [1] - 223:12</p> <p><b>interstate</b> [11] - 233:22, 233:25, 234:13, 274:25, 275:22, 276:2, 276:13, 278:25, 279:3, 279:11, 279:16</p> <p><b>interview</b> [2] - 221:17, 221:24</p> <p><b>interviewed</b> [1] - 221:6</p> <p><b>introduced</b> [4] - 210:23, 269:25, 274:7, 274:12</p> <p><b>investigate</b> [2] - 223:20, 244:16</p> <p><b>investigation</b> [4] - 219:4, 219:6, 221:3, 290:8</p> <p><b>investigative</b> [3] - 218:18, 273:13, 273:19</p> <p><b>investigator</b> [5] - 218:13, 223:4, 223:9, 224:2, 257:20</p> <p><b>involve</b> [1] - 269:9</p> <p><b>isolation</b> [1] - 237:17</p> <p><b>issue</b> [2] - 259:10, 272:17</p> <p><b>issues</b> [1] - 261:7</p> <p><b>items</b> [2] - 238:20, 242:15</p> <p><b>itself</b> [1] - 269:17</p> <p><b>Ivery</b> [16] - 228:22, 229:18, 230:20, 231:7, 231:13, 231:24, 232:5, 232:9, 232:15, 232:16, 234:17, 239:9, 239:12, 255:15, 260:13</p> <p><b>Ivy</b> [4] - 240:24, 241:1, 241:8, 241:13</p> <p><b>Ivy's</b> [1] - 241:3</p>
<p style="text-align: center;"><b>I</b></p>		<p style="text-align: center;"><b>J</b></p>
<p><b>idea</b> [5] - 246:15, 257:8, 257:17, 258:6, 259:2</p> <p><b>identification</b> [1] - 267:9</p> <p><b>II</b> [2] - 204:6, 292:3</p> <p><b>immediate</b> [1] - 224:19</p> <p><b>impaired</b> [2] - 250:21, 251:3</p> <p><b>impartial</b> [2] - 265:19, 282:7</p> <p><b>impartiality</b> [1] - 263:20</p> <p><b>impeach</b> [3] - 213:23, 215:16, 215:24</p> <p><b>impeachable</b> [1] - 213:2</p> <p><b>impeachables</b> [1] - 215:15</p> <p><b>impeached</b> [2] - 207:10, 270:4</p> <p><b>impeachment</b> [1] - 207:16</p> <p><b>important</b> [5] - 237:23, 238:14, 247:2, 264:10, 264:12</p> <p><b>importantly</b> [1] - 240:22</p> <p><b>imposed</b> [1] - 280:4</p> <p><b>imposes</b> [1] - 265:6</p> <p><b>imposing</b> [1] - 279:24</p> <p><b>imprisonment</b> [5] - 232:25, 275:3, 276:7, 276:17, 276:24</p> <p><b>improper</b> [2] - 246:23, 263:23</p> <p><b>IN</b> [1] - 204:1</p> <p><b>incalculable</b> [1] - 246:16</p> <p><b>incident</b> [5] - 221:25, 222:1, 237:21, 244:25</p> <p><b>inclination</b> [2] - 287:21, 288:3</p> <p><b>include</b> [8] - 211:5, 211:9, 211:10, 212:5, 227:18, 227:22, 275:20, 284:14</p> <p><b>included</b> [2] - 209:21, 211:13</p> <p><b>Included</b> [1] - 283:21</p> <p><b>including</b> [1] - 275:9</p> <p><b>inconsistencies</b> [1] - 237:16</p> <p><b>incorporated</b> [1] - 266:23</p> <p><b>Incorporating</b> [1] - 225:16</p> <p><b>incriminating</b> [1] - 240:1</p> <p><b>independent</b> [1] - 272:22</p> <p><b>independently</b> [1] - 236:21</p> <p><b>INDEX</b> [1] - 292:1</p>		<p><b>jail</b> [1] - 276:3</p> <p><b>James</b> [4] - 228:18, 229:7, 260:1, 260:10</p> <p><b>January</b> [2] - 213:11, 213:21</p> <p><b>Jim</b> [9] - 254:11, 254:12, 254:14, 254:20, 254:23, 254:25, 255:1, 255:2, 255:11</p> <p><b>job</b> [1] - 245:24</p> <p><b>John</b> [2] - 219:23, 240:6</p> <p><b>join</b> [1] - 288:20</p> <p><b>joint</b> [2] - 278:7, 278:10</p> <p><b>jointly</b> [1] - 278:13</p> <p><b>Joseph</b> [1] - 218:4</p> <p><b>JOSEPH</b> [2] - 218:5, 292:10</p> <p><b>Jr</b> [3] - 204:11, 205:4, 219:23</p> <p><b>judge</b> [2] - 236:11, 270:23</p> <p><b>judges</b> [7] - 262:9, 262:24, 263:15, 270:20, 282:15, 289:5</p> <p><b>judging</b> [2] - 237:23, 283:20</p> <p><b>judgment</b> [5] - 246:4, 273:8, 281:24, 282:5, 290:11</p> <p><b>July</b> [1] - 218:16</p> <p><b>jump</b> [1] - 287:9</p> <p><b>jumping</b> [1] - 220:2</p>

<p><b>junkie</b> <sup>[1]</sup> - 236:17 <b>junkies</b> <sup>[1]</sup> - 248:11 <b>junky</b> <sup>[5]</sup> - 246:17, 247:1, 250:16, 251:3, 251:15 <b>JUROR</b> <sup>[2]</sup> - 285:9, 290:19 <b>JURORS</b> <sup>[3]</sup> - 228:17, 235:7, 261:5 <b>jurors</b> <sup>[8]</sup> - 244:14, 265:17, 275:16, 280:3, 282:8, 282:13, 288:6, 288:15 <b>Jury</b> <sup>[8]</sup> - 210:11, 210:19, 211:14, 217:24, 274:25, 286:14, 288:21, 290:23 <b>jury</b> <sup>[35]</sup> - 204:10, 210:12, 212:24, 216:17, 216:19, 217:20, 218:1, 224:10, 228:3, 235:6, 238:18, 256:20, 261:3, 262:3, 262:8, 265:13, 266:18, 268:20, 271:25, 279:23, 280:10, 280:16, 283:20, 285:4, 285:10, 286:2, 287:6, 288:20, 288:25, 289:2, 289:7, 290:12, 290:14, 290:22 <b>JURY</b> <sup>[2]</sup> - 292:3, 292:7 <b>JURY</b>..... <sup>[1]</sup> - 292:15 <b>JURY</b>..... <sup>[1]</sup> - 292:17 <b>justice</b> <sup>[1]</sup> - 264:20 <b>justified</b> <sup>[2]</sup> - 250:11, 269:3</p>	<p><b>LAW</b> <sup>[1]</sup> - 227:10 <b>law</b> <sup>[36]</sup> - 211:16, 227:13, 227:15, 227:16, 228:7, 232:20, 234:21, 236:14, 261:8, 261:19, 261:22, 261:24, 262:1, 262:5, 262:6, 263:6, 263:7, 263:11, 264:22, 265:6, 265:9, 266:16, 272:1, 272:3, 272:8, 272:13, 274:19, 275:15, 275:18, 278:6, 278:21, 288:1, 288:5, 288:11, 289:3, 289:7 <b>Law</b> <sup>[1]</sup> - 273:19 <b>lawful</b> <sup>[1]</sup> - 259:11 <b>laws</b> <sup>[4]</sup> - 264:11, 275:14, 275:18, 275:20 <b>Lawson</b> <sup>[1]</sup> - 284:1 <b>Lawson's</b> <sup>[1]</sup> - 286:7 <b>lawsuit</b> <sup>[1]</sup> - 264:17 <b>lawyer</b> <sup>[1]</sup> - 266:22 <b>lawyer's</b> <sup>[2]</sup> - 266:21, 267:4 <b>lawyers</b> <sup>[6]</sup> - 228:5, 261:21, 262:14, 263:5, 267:16, 268:5 <b>lay</b> <sup>[1]</sup> - 250:2 <b>lays</b> <sup>[1]</sup> - 250:2 <b>learn</b> <sup>[4]</sup> - 221:6, 221:17, 221:23, 222:3 <b>learned</b> <sup>[1]</sup> - 222:25 <b>least</b> <sup>[7]</sup> - 214:13, 248:3, 248:10, 259:22, 260:3, 267:24, 287:12 <b>leave</b> <sup>[3]</sup> - 245:5, 249:1, 249:2 <b>leaves</b> <sup>[2]</sup> - 287:19, 289:8 <b>leaving</b> <sup>[1]</sup> - 239:23 <b>Leaving</b> <sup>[1]</sup> - 215:10 <b>led</b> <sup>[5]</sup> - 247:3, 247:4, 247:5, 247:6, 247:20 <b>left</b> <sup>[6]</sup> - 222:18, 232:11, 232:12, 251:2, 260:10, 260:24 <b>legal</b> <sup>[8]</sup> - 261:24, 273:18, 287:6, 288:23, 289:13, 289:16, 289:17, 290:15 <b>legitimate</b> <sup>[1]</sup> - 272:7 <b>less</b> <sup>[6]</sup> - 246:22, 252:11, 252:12, 264:18, 266:15, 272:4 <b>lesser</b> <sup>[1]</sup> - 272:5 <b>LEVIN</b> <sup>[3]</sup> - 286:18, 286:21, 286:24 <b>Levin</b> <sup>[2]</sup> - 204:14, 256:1 <b>liars</b> <sup>[1]</sup> - 256:17 <b>liberal</b> <sup>[1]</sup> - 237:2 <b>liberty</b> <sup>[1]</sup> - 251:19 <b>licensed</b> <sup>[1]</sup> - 275:24 <b>lie</b> <sup>[4]</sup> - 252:16, 252:17, 252:18, 252:20 <b>lift</b> <sup>[1]</sup> - 244:19 <b>light</b> <sup>[5]</sup> - 238:22, 267:18, 269:3, 273:5, 283:6 <b>lighting</b> <sup>[7]</sup> - 238:24, 239:2, 239:4, 239:8, 240:11, 249:18 <b>likely</b> <sup>[1]</sup> - 277:12 <b>limited</b> <sup>[1]</sup> - 274:13 <b>line</b> <sup>[5]</sup> - 234:3, 234:14, 248:12, 279:6, 279:8 <b>lined</b> <sup>[1]</sup> - 255:9</p>	<p><b>linking</b> <sup>[1]</sup> - 251:10 <b>list</b> <sup>[2]</sup> - 219:24, 244:3 <b>literally</b> <sup>[1]</sup> - 248:12 <b>live</b> <sup>[1]</sup> - 210:8 <b>lives</b> <sup>[2]</sup> - 220:7, 289:15 <b>local</b> <sup>[3]</sup> - 246:17, 275:13, 275:15 <b>located</b> <sup>[1]</sup> - 249:17 <b>location</b> <sup>[2]</sup> - 238:19, 240:9 <b>lookup</b> <sup>[1]</sup> - 216:18 <b>log</b> <sup>[1]</sup> - 243:8 <b>logical</b> <sup>[2]</sup> - 268:10, 269:5 <b>Lombard</b> <sup>[1]</sup> - 204:24 <b>look</b> <sup>[7]</sup> - 232:10, 236:24, 238:16, 242:14, 256:6, 270:7, 273:15 <b>looked</b> <sup>[1]</sup> - 287:14 <b>looking</b> <sup>[3]</sup> - 248:6, 255:5, 287:13 <b>lost</b> <sup>[1]</sup> - 247:16 <b>lucky</b> <sup>[1]</sup> - 230:11 <b>lying</b> <sup>[2]</sup> - 252:5, 253:12</p>
<b>M</b>		
<p><b>makings</b> <sup>[1]</sup> - 248:10 <b>malicious</b> <sup>[2]</sup> - 248:15, 252:8 <b>Malik</b> <sup>[1]</sup> - 204:17 <b>man</b> <sup>[15]</sup> - 236:3, 236:13, 237:13, 239:1, 239:23, 240:12, 243:24, 248:17, 249:7, 249:8, 249:22, 250:5, 250:11, 250:15, 253:15 <b>mandatory</b> <sup>[2]</sup> - 210:11, 210:15 <b>manufactured</b> <sup>[5]</sup> - 234:8, 234:11, 247:12, 247:13 <b>March</b> <sup>[2]</sup> - 213:3, 213:5 <b>marked</b> <sup>[3]</sup> - 219:9, 238:18, 267:9 <b>marker</b> <sup>[1]</sup> - 238:15 <b>market</b> <sup>[1]</sup> - 248:11 <b>Martin</b> <sup>[3]</sup> - 204:23, 291:14, 291:20 <b>MARYLAND</b> <sup>[1]</sup> - 204:1 <b>Maryland</b> <sup>[11]</sup> - 204:8, 204:24, 205:3, 220:10, 234:8, 234:12, 247:11, 247:12, 275:1, 275:2, 277:3 <b>matter</b> <sup>[8]</sup> - 204:10, 264:11, 268:19, 280:23, 290:10, 290:15, 291:17 <b>matters</b> <sup>[3]</sup> - 261:24, 272:17, 272:19 <b>mean</b> <sup>[7]</sup> - 210:24, 255:22, 262:25, 269:25, 272:3, 277:23, 288:16 <b>meaning</b> <sup>[3]</sup> - 222:18, 244:3, 289:13 <b>means</b> <sup>[5]</sup> - 277:22, 278:16, 278:18, 279:1, 280:17 <b>mechanics</b> <sup>[1]</sup> - 280:8 <b>medic</b> <sup>[10]</sup> - 231:1, 240:18, 240:20, 243:3, 243:7, 243:9, 243:11, 243:16, 243:17, 256:15 <b>medical</b> <sup>[2]</sup> - 243:7, 243:11 <b>meet</b> <sup>[1]</sup> - 233:18 <b>meeting</b> <sup>[1]</sup> - 275:13 <b>member</b> <sup>[5]</sup> - 218:19, 218:24, 237:9, 243:19, 280:16 <b>Members</b> <sup>[5]</sup> - 218:1, 228:3, 261:3,</p>		

<p>285:10, 289:2</p> <p><b>members</b> [6] - 235:11, 243:14, 248:5, 262:8, 280:15, 290:22</p> <p><b>memory</b> [2] - 238:13, 271:4</p> <p><b>mentioned</b> [2] - 243:19, 244:2</p> <p><b>Mere</b> [1] - 211:23</p> <p><b>mere</b> [8] - 211:24, 212:2, 212:5, 236:17, 238:11, 243:10, 247:22, 282:13</p> <p><b>merely</b> [6] - 236:14, 247:24, 273:6, 274:2, 279:19, 289:14</p> <p><b>Merit</b> [1] - 291:14</p> <p><b>merits</b> [3] - 280:19, 280:23, 281:1</p> <p><b>met</b> [2] - 263:24, 273:14</p> <p><b>metal</b> [2] - 244:6, 244:9</p> <p><b>method</b> [3] - 241:25, 245:20, 245:21</p> <p><b>microfibers</b> [2] - 257:3, 258:20</p> <p><b>middle</b> [4] - 239:11, 239:19, 240:5, 252:25</p> <p><b>midway</b> [1] - 229:12</p> <p><b>might</b> [4] - 255:1, 255:2, 255:3, 255:4</p> <p><b>mind</b> [6] - 230:2, 269:10, 269:13, 270:15, 273:24, 281:2</p> <p><b>minimal</b> [1] - 286:22</p> <p><b>minimum</b> [2] - 210:12, 210:16</p> <p><b>minute</b> [3] - 226:6, 226:16, 229:4</p> <p><b>minutes</b> [13] - 216:7, 216:17, 226:1, 226:5, 226:9, 226:15, 226:23, 227:1, 228:11, 234:25, 249:19, 258:22, 284:9</p> <p><b>miscues</b> [1] - 236:25</p> <p><b>misperception</b> [1] - 235:18</p> <p><b>misperceptions</b> [2] - 237:1, 237:16</p> <p><b>missing</b> [2] - 237:5, 242:21</p> <p><b>missions</b> [1] - 246:14</p> <p><b>missteps</b> [1] - 236:25</p> <p><b>Mistake</b> [1] - 253:22</p> <p><b>mistake</b> [10] - 237:19, 237:25, 238:1, 238:2, 238:11, 253:18, 253:20, 278:18</p> <p><b>mistaken</b> [4] - 236:4, 248:16, 252:5, 253:13</p> <p><b>mistakes</b> [8] - 236:25, 237:16, 237:17, 238:13, 247:3, 247:5, 248:15</p> <p><b>mobile</b> [1] - 249:15</p> <p><b>moment</b> [4] - 254:15, 264:4, 270:13, 270:15</p> <p><b>moments</b> [1] - 260:12</p> <p><b>money</b> [1] - 250:19</p> <p><b>monitor</b> [1] - 220:20</p> <p><b>monitors</b> [1] - 238:17</p> <p><b>morning</b> [9] - 207:8, 238:5, 285:17, 289:20, 290:18, 290:21, 291:1, 291:7, 291:10</p> <p><b>Most</b> [1] - 240:22</p> <p><b>most</b> [7] - 205:10, 210:25, 240:15, 240:17, 254:12, 270:2, 270:10</p> <p><b>motion</b> [15] - 225:17, 225:20, 231:23, 240:17, 244:7, 249:9, 249:21, 250:24, 251:25, 252:1, 253:5, 253:10, 255:14, 260:14</p> <p><b>Motion</b> [1] - 225:22</p>	<p><b>motions</b> [1] - 225:14</p> <p><b>motive</b> [2] - 246:23, 271:5</p> <p><b>Motor</b> [1] - 219:13</p> <p><b>motor</b> [1] - 224:21</p> <p><b>move</b> [1] - 220:13</p> <p><b>MR</b> [171] - 205:8, 205:14, 205:17, 205:20, 205:22, 205:24, 206:1, 206:3, 206:5, 206:7, 206:9, 206:11, 206:13, 206:15, 206:17, 206:19, 206:21, 206:23, 206:25, 207:4, 207:8, 207:13, 207:17, 207:20, 207:22, 207:24, 208:1, 208:3, 208:5, 208:7, 208:9, 208:11, 208:13, 208:15, 208:17, 208:19, 208:21, 208:24, 209:3, 209:5, 209:7, 209:9, 209:11, 209:13, 209:15, 209:17, 209:19, 209:24, 210:3, 210:5, 210:9, 210:17, 210:22, 211:4, 211:6, 211:7, 211:11, 211:14, 211:20, 211:23, 212:4, 212:8, 212:10, 212:14, 212:17, 212:18, 212:21, 212:23, 212:25, 213:5, 213:8, 213:10, 213:14, 213:16, 213:20, 214:1, 214:4, 214:7, 214:9, 214:11, 214:19, 214:22, 215:6, 215:9, 215:13, 215:16, 216:4, 216:7, 216:9, 216:16, 216:22, 217:1, 217:5, 217:6, 217:9, 217:11, 217:13, 217:21, 218:3, 218:8, 220:12, 220:16, 221:10, 221:12, 221:14, 221:20, 221:22, 222:5, 222:7, 222:10, 222:12, 222:20, 222:22, 223:3, 224:24, 225:2, 225:4, 225:9, 225:15, 225:18, 225:21, 225:24, 226:1, 226:3, 226:5, 226:8, 226:11, 226:14, 226:17, 226:19, 226:21, 226:23, 227:1, 227:3, 227:6, 227:12, 227:14, 227:21, 227:23, 227:25, 228:15, 228:18, 235:4, 235:8, 249:20, 251:24, 256:18, 256:23, 258:23, 282:21, 282:23, 282:25, 283:4, 283:10, 283:12, 284:3, 284:6, 284:18, 286:17, 286:18, 286:21, 286:24, 287:11, 287:18, 287:23, 288:11, 288:13, 288:17, 291:4, 291:6, 292:11</p> <p><b>multiple</b> [1] - 229:10</p> <p><b>must</b> [16] - 233:23, 236:21, 247:18, 261:9, 261:24, 262:6, 264:24, 267:22, 269:6, 270:7, 276:4, 276:14, 277:15, 278:15, 278:22, 279:1</p>	<p>281:5, 286:8</p> <p><b>needed</b> [1] - 235:12</p> <p><b>needing</b> [1] - 285:5</p> <p><b>needs</b> [1] - 260:5</p> <p><b>negative</b> [1] - 242:17</p> <p><b>neighborhood</b> [3] - 257:19, 257:21, 258:6</p> <p><b>neighborhoods</b> [1] - 236:9</p> <p><b>never</b> [12] - 217:2, 240:16, 240:22, 242:6, 242:18, 265:5, 265:6, 271:19, 271:20, 280:18, 281:2, 281:5</p> <p><b>next</b> [4] - 209:1, 228:4, 254:16, 254:19</p> <p><b>nice</b> [1] - 250:17</p> <p><b>night</b> [24] - 221:25, 231:12, 231:13, 235:10, 235:19, 238:2, 238:24, 239:5, 239:8, 240:11, 242:23, 243:5, 243:13, 244:4, 246:3, 246:7, 247:22, 248:15, 249:16, 251:7, 251:16, 251:18, 259:15, 290:17</p> <p><b>night's</b> [2] - 290:5</p> <p><b>Nissan</b> [5] - 219:7, 219:20, 219:21, 219:25, 240:5</p> <p><b>nobody</b> [1] - 244:8</p> <p><b>non</b> [1] - 283:25</p> <p><b>non-patterned</b> [1] - 283:25</p> <p><b>none</b> [2] - 262:16, 271:13</p> <p><b>None</b> [11] - 206:13, 206:15, 208:1, 208:3, 208:17, 208:19, 209:5, 209:7, 209:13, 209:15, 257:12</p> <p><b>nonexistence</b> [1] - 266:13</p> <p><b>normal</b> [1] - 254:9</p> <p><b>NORTHERN</b> [1] - 204:2</p> <p><b>NOTE</b> [1] - 292:17</p> <p><b>note</b> [6] - 280:14, 280:21, 280:24, 287:6, 288:4, 288:23</p> <p><b>noted</b> [1] - 227:12</p> <p><b>notes</b> [6] - 261:11, 261:14, 261:15, 285:11, 285:12, 285:14</p> <p><b>nothing</b> [2] - 231:2, 277:9</p> <p><b>Nothing</b> [2] - 212:10, 284:6</p> <p><b>noticing</b> [2] - 239:8, 239:12</p> <p><b>noting</b> [1] - 215:20</p> <p><b>November</b> [2] - 214:4, 245:1</p> <p><b>number</b> [4] - 209:2, 210:14, 210:20, 280:11</p> <p><b>Number</b> [28] - 205:13, 205:16, 205:19, 205:23, 207:19, 207:23, 208:2, 209:2, 209:6, 209:10, 210:11, 210:14, 210:19, 210:22, 211:6, 211:10, 211:15, 211:21, 219:10, 220:13, 220:21, 227:13, 227:15, 229:16, 238:17, 283:5, 285:2, 287:24</p> <p><b>numerically</b> [1] - 281:4</p>
<b>N</b>		
<p><b>name</b> [3] - 244:1, 264:14, 284:25</p> <p><b>national</b> [1] - 264:1</p> <p><b>nature</b> [1] - 264:6</p> <p><b>near</b> [2] - 240:16, 249:9</p> <p><b>necessarily</b> [4] - 210:24, 270:1, 272:4, 277:23</p> <p><b>necessary</b> [4] - 279:6, 279:9, 280:13, 284:4</p> <p><b>need</b> [6] - 245:5, 246:15, 256:5, 271:11,</p>		
<b>O</b>		
<p><b>o'clock</b> [2] - 217:16, 289:18</p> <p><b>oath</b> [2] - 280:3, 280:21</p> <p><b>object</b> [6] - 208:21, 209:19, 244:9,</p>		

<p>263:3, 278:7, 288:13  <b>objected</b> [1] - 263:9  <b>Objection</b> [6] - 221:10, 221:20, 222:5, 222:10, 222:20, 256:18  <b>objection</b> [30] - 205:15, 205:18, 206:11, 206:17, 206:19, 206:25, 207:20, 207:22, 207:24, 208:5, 208:7, 208:13, 208:15, 208:25, 209:3, 209:9, 209:11, 209:17, 209:23, 209:24, 210:1, 210:3, 210:5, 212:2, 212:12, 212:24, 212:25, 214:22, 220:14, 288:19  <b>objections</b> [5] - 205:12, 262:16, 283:1, 288:10, 291:3  <b>obligation</b> [1] - 271:15  <b>observed</b> [1] - 266:6  <b>obtain</b> [1] - 214:13  <b>Obviously</b> [1] - 290:4  <b>occasion</b> [1] - 271:10  <b>occurred</b> [3] - 274:19, 275:18, 277:1  <b>occurrence</b> [1] - 269:15  <b>October</b> [10] - 213:10, 213:16, 215:24, 220:5, 229:8, 236:23, 244:25, 250:17, 259:25, 275:1  <b>odd</b> [1] - 255:7  <b>OF</b> [4] - 204:1, 204:4, 205:1, 292:6  <b>off-the-cuff</b> [1] - 245:19  <b>offense</b> [4] - 233:12, 274:10, 274:19, 277:14  <b>offer</b> [1] - 270:17  <b>offering</b> [2] - 210:25, 270:2  <b>offers</b> [1] - 263:3  <b>Office</b> [6] - 218:10, 218:11, 218:15, 218:17, 223:18, 224:4  <b>officer</b> [11] - 227:16, 227:17, 237:5, 239:21, 248:21, 248:25, 249:11, 253:1, 258:3, 258:15, 285:1  <b>Officer</b> [85] - 228:18, 228:20, 228:21, 228:22, 229:7, 229:13, 229:14, 229:20, 230:10, 230:11, 230:12, 230:15, 230:16, 230:20, 231:7, 231:12, 231:13, 231:14, 231:23, 231:24, 231:25, 232:3, 232:4, 232:5, 232:9, 232:13, 232:14, 232:15, 232:16, 233:8, 234:16, 234:17, 237:14, 237:15, 238:13, 238:16, 238:19, 238:21, 239:5, 239:9, 239:10, 240:2, 240:4, 240:6, 240:8, 240:12, 240:15, 241:3, 241:8, 241:10, 241:11, 241:13, 243:9, 243:20, 243:22, 248:14, 248:25, 249:6, 249:23, 249:25, 250:9, 250:14, 250:25, 251:24, 252:8, 252:12, 253:3, 253:4, 253:10, 253:14, 255:13, 255:14, 255:15, 256:2, 256:16, 259:4, 259:19, 260:1, 260:8, 260:10, 260:13  <b>officer's</b> [2] - 235:18, 248:5  <b>officers</b> [24] - 229:9, 230:3, 230:4, 230:6, 231:4, 235:10, 237:5, 237:11, 239:6, 240:3, 241:23, 243:25, 246:13, 248:10, 248:20, 249:5, 249:14,</p>	<p>253:25, 254:3, 255:8, 257:12, 257:23, 260:2, 260:8  <b>Officers</b> [3] - 229:17, 230:25, 239:9  <b>officers'</b> [1] - 240:21  <b>official</b> [1] - 272:3  <b>officials</b> [2] - 272:2, 275:15  <b>often</b> [1] - 269:16  <b>Ohio</b> [2] - 234:9, 234:11  <b>once</b> [3] - 225:20, 226:13, 287:9  <b>One</b> [6] - 249:11, 254:18, 254:20, 255:21, 259:17, 266:4  <b>one</b> [70] - 207:2, 207:4, 209:14, 210:22, 214:1, 216:9, 216:17, 217:7, 226:9, 227:12, 229:14, 232:21, 233:1, 235:9, 235:18, 236:1, 236:2, 237:13, 238:20, 238:22, 238:23, 238:25, 239:19, 240:1, 241:13, 242:14, 244:8, 244:23, 245:8, 246:13, 246:14, 247:15, 248:6, 248:10, 249:18, 249:24, 250:13, 250:20, 254:4, 254:5, 254:22, 254:25, 255:1, 255:2, 255:3, 257:11, 258:7, 259:18, 259:22, 260:3, 260:9, 267:24, 268:7, 268:14, 269:13, 269:24, 275:4, 276:8, 276:18, 276:25, 278:7, 278:8, 280:11, 280:15, 281:10, 282:3, 284:10, 286:12, 288:8  <b>one's</b> [5] - 241:21, 248:22, 249:3, 249:4, 269:13  <b>open</b> [1] - 280:20  <b>opening</b> [2] - 225:25, 262:15  <b>opinion</b> [8] - 243:12, 262:4, 262:25, 263:13, 272:18, 273:7, 282:10, 282:12  <b>opinions</b> [2] - 272:17, 272:25  <b>opportunity</b> [4] - 220:17, 223:20, 271:3, 283:22  <b>orally</b> [1] - 280:20  <b>order</b> [4] - 234:9, 234:10, 281:25, 286:12  <b>ordered</b> [1] - 267:14  <b>ordinarily</b> [1] - 273:2  <b>ordinary</b> [1] - 272:6  <b>origin</b> [1] - 264:1  <b>otherwise</b> [2] - 280:19, 281:4  <b>ought</b> [1] - 262:5  <b>outcome</b> [2] - 271:6, 272:10  <b>outside</b> [3] - 238:10, 247:12, 267:22  <b>outweigh</b> [1] - 215:19  <b>overlook</b> [1] - 246:18  <b>overreaching</b> [1] - 252:11  <b>Overruled</b> [3] - 221:13, 256:20, 256:22  <b>overruled</b> [1] - 210:1  <b>overview</b> [1] - 229:5  <b>overzealous</b> [1] - 247:2  <b>own</b> [18] - 237:22, 241:13, 241:19, 245:5, 245:17, 248:5, 248:16, 250:10, 262:14, 266:7, 266:8, 267:19, 270:8, 270:21, 273:8, 282:9, 290:8, 290:11  <b>owned</b> [4] - 222:4, 240:5, 247:15, 259:10  <b>owner</b> [1] - 259:11</p>	<p><b>ownership</b> [2] - 259:10, 278:13  <b>Ownership</b> [1] - 259:10</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> [5] - 217:17, 229:9, 287:2  <b>pads</b> [1] - 280:25  <b>PAGE</b> [1] - 292:6  <b>page</b> [1] - 220:4  <b>paid</b> [1] - 248:22  <b>pants</b> [1] - 251:2  <b>paper</b> [5] - 222:19, 247:18, 247:20, 259:9  <b>paramedic</b> [1] - 243:7  <b>parked</b> [3] - 232:11, 249:11, 252:20  <b>part</b> [11] - 214:12, 233:12, 235:12, 237:11, 240:17, 240:19, 242:24, 246:24, 246:25, 271:12, 280:8  <b>participating</b> [2] - 236:15, 279:19  <b>particular</b> [1] - 288:2  <b>particularly</b> [1] - 224:13  <b>parties</b> [4] - 262:22, 264:18, 268:1, 277:3  <b>partisans</b> [1] - 282:15  <b>party</b> [5] - 210:23, 263:18, 264:16, 269:24, 270:10  <b>pass</b> [1] - 262:9  <b>Pass</b> [2] - 211:3, 211:25  <b>passed</b> [2] - 275:14, 285:24  <b>passing</b> [2] - 230:23, 230:24  <b>past</b> [2] - 239:7, 239:10  <b>patrol</b> [1] - 239:11  <b>patterned</b> [1] - 283:25  <b>Paul</b> [1] - 285:1  <b>pavement</b> [2] - 244:9, 250:3  <b>pay</b> [1] - 261:9  <b>pen</b> [4] - 253:19, 253:20, 255:25  <b>Pennsylvania</b> [2] - 223:5, 246:3  <b>people</b> [26] - 229:14, 229:17, 235:20, 236:10, 236:18, 237:6, 238:19, 239:16, 241:3, 248:7, 248:8, 252:17, 252:24, 254:17, 254:19, 254:20, 255:5, 257:19, 257:20, 258:7, 259:3, 259:4, 259:21, 264:2, 275:21, 276:1  <b>perceived</b> [1] - 238:2  <b>perform</b> [2] - 263:17, 263:19  <b>perhaps</b> [4] - 220:3, 247:1, 250:22, 252:12  <b>period</b> [1] - 286:9  <b>permission</b> [1] - 286:19  <b>permit</b> [2] - 213:23, 215:24  <b>permitted</b> [5] - 269:1, 272:16, 272:18, 279:15, 285:13  <b>person</b> [24] - 224:13, 232:22, 234:20, 235:8, 235:16, 242:12, 242:16, 242:20, 243:7, 243:11, 243:18, 243:23, 244:8, 246:22, 250:19, 250:21, 251:11, 260:19, 270:19, 274:24, 275:23, 278:7, 278:9, 281:3</p>
--	--	---



<p><b>person's</b> [2] - 269:10, 277:23</p> <p><b>personal</b> [3] - 263:25, 270:8, 272:10</p> <p><b>personnel</b> [1] - 215:12</p> <p><b>persons</b> [3] - 224:20, 275:9, 275:12</p> <p><b>persuaded</b> [1] - 270:10</p> <p><b>persuasive</b> [1] - 258:11</p> <p><b>perusing</b> [1] - 219:12</p> <p><b>phase</b> [1] - 228:4</p> <p><b>phone</b> [1] - 284:9</p> <p><b>photograph</b> [3] - 220:21, 220:23, 220:24</p> <p><b>physical</b> [1] - 278:4</p> <p><b>physically</b> [2] - 247:25, 277:24</p> <p><b>pick</b> [1] - 226:13</p> <p><b>picked</b> [2] - 239:23, 241:23</p> <p><b>picture</b> [3] - 235:13, 241:14, 254:8</p> <p><b>pictures</b> [3] - 229:11, 229:22, 249:16</p> <p><b>piece</b> [1] - 244:6</p> <p><b>pistol</b> [1] - 275:6</p> <p><b>place</b> [7] - 224:23, 235:9, 251:8, 254:5, 254:6, 269:22, 281:13</p> <p><b>placed</b> [5] - 230:21, 231:9, 233:16, 240:5, 253:22</p> <p><b>planning</b> [1] - 285:15</p> <p><b>plausible</b> [1] - 248:3</p> <p><b>played</b> [1] - 286:21</p> <p><b>plea</b> [2] - 210:17, 265:3</p> <p><b>pleased</b> [1] - 280:7</p> <p><b>pled</b> [2] - 213:10, 265:1</p> <p><b>PM</b> [2] - 204:9</p> <p><b>pocket</b> [3] - 242:12, 251:2</p> <p><b>Point</b> [3] - 234:7, 275:5</p> <p><b>point</b> [23] - 211:16, 227:12, 232:2, 233:24, 245:2, 254:25, 255:8, 255:21, 256:7, 256:17, 257:8, 258:5, 258:7, 258:21, 259:14, 259:15, 259:17, 259:18, 261:21, 288:2, 289:22</p> <p><b>pointed</b> [2] - 228:21, 239:3</p> <p><b>pointing</b> [3] - 221:1, 230:17, 235:23</p> <p><b>points</b> [6] - 231:6, 231:11, 255:11, 255:20, 257:16, 259:8</p> <p><b>Police</b> [6] - 218:19, 218:21, 224:3, 227:18, 241:25, 245:22</p> <p><b>police</b> [21] - 221:6, 221:9, 221:15, 221:23, 222:9, 223:17, 229:9, 230:3, 230:4, 230:6, 239:2, 241:2, 247:2, 248:5, 248:19, 248:20, 248:25, 249:5, 251:16, 253:24, 257:23</p> <p><b>policy</b> [2] - 275:17, 285:3</p> <p><b>poor</b> [5] - 238:24, 239:4, 239:8, 240:11</p> <p><b>populated</b> [1] - 223:14</p> <p><b>portray</b> [1] - 220:23</p> <p><b>pose</b> [1] - 248:3</p> <p><b>position</b> [4] - 218:12, 250:7, 250:12</p> <p><b>possess</b> [4] - 235:20, 246:6, 275:5, 277:22</p> <p><b>possessed</b> [18] - 233:8, 233:19, 233:22, 235:17, 242:23, 246:10, 246:11, 248:1, 251:7, 274:24, 276:11, 276:20, 277:2, 277:17, 278:12, 278:16, 278:17</p> <p><b>possesses</b> [2] - 278:1, 278:7</p> <p><b>possessing</b> [6] - 251:9, 275:21, 276:1, 276:16, 278:24, 279:14</p> <p><b>possession</b> [21] - 232:22, 233:9, 233:24, 234:3, 234:19, 236:16, 236:20, 247:23, 251:14, 260:18, 275:11, 276:12, 277:13, 277:25, 278:2, 278:4, 278:5, 278:6, 278:8, 278:10, 279:2</p> <p><b>possible</b> [3] - 261:10, 278:8, 279:22</p> <p><b>posts</b> [1] - 241:14</p> <p><b>powder</b> [4] - 241:21, 245:6, 252:15, 256:3</p> <p><b>power</b> [3] - 278:3, 278:9, 278:11</p> <p><b>practice</b> [1] - 285:22</p> <p><b>practices</b> [1] - 224:4</p> <p><b>pre</b> [1] - 210:17</p> <p><b>preference</b> [1] - 288:14</p> <p><b>prejudice</b> [3] - 215:22, 263:8, 263:18</p> <p><b>prejudicial</b> [1] - 215:20</p> <p><b>preliminary</b> [1] - 273:24</p> <p><b>prepared</b> [1] - 281:9</p> <p><b>presence</b> [6] - 211:23, 211:24, 212:2, 212:5, 238:10, 247:22</p> <p><b>present</b> [4] - 204:18, 247:24, 271:16, 279:20</p> <p><b>presented</b> [10] - 236:6, 242:10, 246:12, 247:9, 247:15, 247:17, 247:19, 258:15, 268:25, 272:20</p> <p><b>presentence</b> [1] - 214:24</p> <p><b>preserve</b> [1] - 211:16</p> <p><b>preside</b> [1] - 280:12</p> <p><b>presiding</b> [1] - 205:4</p> <p><b>presumed</b> [3] - 260:22, 265:11, 270:18</p> <p><b>presumes</b> [1] - 265:9</p> <p><b>presumption</b> [3] - 264:2, 265:16, 265:22</p> <p><b>pretended</b> [1] - 240:19</p> <p><b>pretending</b> [1] - 243:14</p> <p><b>pretty</b> [2] - 234:9, 290:12</p> <p><b>prevalence</b> [1] - 275:10</p> <p><b>previous</b> [2] - 225:14, 271:10</p> <p><b>previously</b> [2] - 279:11, 287:25</p> <p><b>prime</b> [1] - 264:11</p> <p><b>printout</b> [3] - 219:13, 219:15</p> <p><b>prints</b> [5] - 241:22, 241:23, 241:24, 242:1, 245:5</p> <p><b>prison</b> [1] - 215:4</p> <p><b>prize</b> [3] - 235:14, 235:16, 241:14</p> <p><b>Probation</b> [1] - 210:18</p> <p><b>probation</b> [2] - 214:12, 214:16</p> <p><b>probative</b> [1] - 215:19</p> <p><b>problem</b> [4] - 215:7, 215:9, 247:5, 275:13</p> <p><b>problems</b> [3] - 236:10, 236:12</p> <p><b>procedure</b> [1] - 280:9</p> <p><b>PROCEEDINGS</b> [2] - 205:1, 292:18</p> <p><b>Proceedings</b> [1] - 291:11</p>	<p><b>proceedings</b> [1] - 291:16</p> <p><b>PROCEEDINGS</b>..... [1] - 292:6</p> <p><b>process</b> [4] - 248:11, 264:7, 268:18, 291:1</p> <p><b>processing</b> [1] - 249:16</p> <p><b>producing</b> [1] - 265:8</p> <p><b>professional</b> [1] - 272:10</p> <p><b>prohibit</b> [1] - 275:21</p> <p><b>prohibited</b> [4] - 232:22, 234:20, 260:18, 276:1</p> <p><b>project</b> [2] - 233:14, 233:18</p> <p><b>projectile</b> [1] - 277:21</p> <p><b>proof</b> [8] - 228:10, 260:16, 263:25, 264:3, 266:11, 269:12, 270:16, 273:15</p> <p><b>Proof</b> [1] - 278:13</p> <p><b>properly</b> [2] - 263:4, 283:19</p> <p><b>proposed</b> [7] - 209:21, 212:14, 212:16, 283:5, 283:12, 283:14, 284:1</p> <p><b>prosecution</b> [3] - 264:14, 265:4, 271:18</p> <p><b>prosecution's</b> [1] - 271:16</p> <p><b>protect</b> [2] - 243:1, 246:21</p> <p><b>prove</b> [19] - 233:10, 233:23, 242:22, 247:25, 265:4, 266:11, 271:17, 271:20, 273:19, 276:4, 276:10, 276:14, 277:15, 278:20, 278:22, 279:1, 279:7, 279:8, 279:10</p> <p><b>proved</b> [9] - 228:6, 260:22, 265:13, 266:1, 268:13, 273:23, 274:6, 288:7, 289:10</p> <p><b>proven</b> [5] - 234:15, 234:18, 260:17, 269:2, 278:5</p> <p><b>proves</b> [1] - 228:25</p> <p><b>provide</b> [3] - 243:2, 245:10, 247:7</p> <p><b>provided</b> [2] - 246:8, 259:15</p> <p><b>proving</b> [4] - 237:8, 267:2, 276:6, 279:4</p> <p><b>provisions</b> [1] - 275:20</p> <p><b>public</b> [1] - 245:23</p> <p><b>Public</b> [5] - 204:16, 204:17, 218:10, 218:14, 224:3</p> <p><b>Publish</b> [1] - 286:1</p> <p><b>pull</b> [1] - 254:2</p> <p><b>pulled</b> [1] - 230:4</p> <p><b>pulling</b> [2] - 241:11, 241:13</p> <p><b>pulls</b> [2] - 249:23, 249:24</p> <p><b>punishable</b> [6] - 232:25, 275:3, 276:3, 276:7, 276:17, 276:24</p> <p><b>punishment</b> [6] - 209:21, 210:10, 212:6, 279:22, 280:4</p> <p><b>purchase</b> [1] - 248:13</p> <p><b>purchased</b> [4] - 219:21, 219:24, 247:10, 259:12</p> <p><b>purpose</b> [5] - 242:25, 274:13, 274:14, 277:10, 282:13</p> <p><b>purposely</b> [1] - 278:17</p> <p><b>purposes</b> [1] - 285:14</p> <p><b>put</b> [15] - 224:23, 228:20, 232:13, 232:15, 235:14, 242:9, 249:11, 257:23, 258:13, 259:4, 259:7, 259:13, 260:6, 260:13, 283:14</p>
---	--

puts [1] - 213:18	receiving [1] - 275:22 recent [1] - 205:10	remembered [1] - 231:8 remind [2] - 269:4, 274:1
<b>Q</b>		
<b>qualifications</b> [1] - 272:25 <b>qualifying</b> [1] - 215:23 <b>Quarles</b> [2] - 204:11, 205:4 <b>questionnaire</b> [2] - 281:10, 285:20 <b>questions</b> [10] - 216:17, 224:25, 225:2, 225:4, 237:18, 242:24, 243:1, 262:16, 262:20, 263:7 <b>Questions</b> [1] - 267:5 <b>quite</b> [5] - 211:16, 237:17, 241:6, 272:7, 287:12	<b>recess</b> [6] - 216:24, 217:16, 286:25, 287:1, 290:21, 291:9 <b>Recess</b> [2] - 217:17, 287:2 <b>recognize</b> [5] - 219:10, 220:21, 236:25, 244:3, 289:3 <b>recognizes</b> [1] - 278:6 <b>recollection</b> [5] - 229:12, 229:13, 253:2, 253:11, 262:14 <b>recollections</b> [1] - 255:7 <b>record</b> [8] - 207:11, 211:15, 211:17, 267:1, 281:15, 284:2, 284:25, 291:16 <b>recover</b> [1] - 239:22 <b>recovered</b> [5] - 230:22, 233:12, 234:18, 253:17, 260:12 <b>REDD</b> [2] - 204:7, 292:2 <b>Redd</b> [67] - 205:6, 207:8, 216:18, 219:2, 222:2, 227:4, 228:19, 228:25, 229:21, 229:25, 230:6, 235:8, 235:15, 235:16, 235:20, 236:2, 236:11, 236:22, 237:13, 237:21, 238:7, 238:9, 238:11, 238:12, 239:1, 239:7, 239:13, 239:14, 239:15, 240:1, 240:9, 240:16, 240:18, 240:19, 241:5, 241:9, 241:12, 242:4, 242:11, 242:18, 242:23, 242:25, 243:5, 243:13, 244:11, 245:25, 246:5, 247:1, 247:4, 247:14, 247:21, 248:4, 248:18, 249:9, 249:12, 250:1, 250:16, 250:20, 251:7, 251:17, 251:20, 251:25, 252:17, 257:11, 275:2, 281:11 <b>Redd's</b> [4] - 242:6, 242:14, 247:22, 251:19 <b>reexamine</b> [1] - 282:9 <b>refer</b> [1] - 215:11 <b>reference</b> [4] - 215:12, 284:11, 284:12, 284:14 <b>referred</b> [1] - 243:9 <b>referring</b> [6] - 215:1, 215:8, 220:20, 222:1, 229:15, 238:17 <b>regard</b> [2] - 268:1, 279:12 <b>regarding</b> [2] - 259:9 <b>Regardless</b> [2] - 239:19, 262:4 <b>Registered</b> [1] - 291:14 <b>registry</b> [1] - 247:11 <b>Reisterstown</b> [1] - 223:13 <b>relating</b> [1] - 280:8 <b>release</b> [3] - 213:3, 213:19, 214:10 <b>released</b> [3] - 213:11, 213:20, 214:14 <b>relevant</b> [2] - 259:14 <b>religion</b> [1] - 264:1 <b>rely</b> [2] - 262:13, 266:3 <b>remaining</b> [1] - 255:21 <b>remains</b> [2] - 265:23, 271:18 <b>remedy</b> [1] - 283:11 <b>Remember</b> [2] - 251:1, 285:12 <b>remember</b> [16] - 235:25, 238:21, 240:18, 240:20, 254:5, 254:13, 255:1, 255:2, 255:3, 255:4, 264:25, 282:14, 285:11	<b>reminders</b> [1] - 285:12 <b>renew</b> [2] - 282:25, 287:23 <b>renewing</b> [1] - 225:13 <b>repeat</b> [1] - 264:8 <b>replace</b> [1] - 256:10 <b>report</b> [4] - 210:17, 214:24, 237:22, 244:25 <b>Reported</b> [1] - 204:22 <b>REPORTER</b> [1] - 291:9 <b>Reporter</b> [2] - 291:14, 291:15 <b>reports</b> [1] - 243:6 <b>represent</b> [1] - 281:24 <b>representing</b> [1] - 242:25 <b>Request</b> [1] - 287:24 <b>request</b> [8] - 209:20, 210:14, 211:17, 227:4, 263:6, 282:25, 283:6, 287:24 <b>requested</b> [7] - 210:10, 210:11, 210:12, 210:19, 211:14, 211:20, 244:23 <b>required</b> [6] - 268:21, 270:17, 271:20, 278:14, 278:20, 279:16 <b>requirement</b> [2] - 273:18, 283:21 <b>requires</b> [4] - 266:18, 274:20, 275:23, 288:12 <b>reserve</b> [1] - 207:15 <b>reserving</b> [1] - 207:9 <b>residue</b> [8] - 242:13, 242:16, 242:18, 251:11, 257:9, 257:14 <b>resolve</b> [1] - 207:16 <b>resources</b> [1] - 244:15 <b>respect</b> [1] - 283:20 <b>response</b> [1] - 287:19 <b>responsibility</b> [1] - 243:3 <b>rest</b> [1] - 290:5 <b>restated</b> [1] - 283:2 <b>rested</b> [2] - 218:1, 225:13 <b>resting</b> [1] - 225:17 <b>restored</b> [4] - 233:2, 276:9, 276:18, 277:4 <b>rests</b> [3] - 225:9, 273:9, 279:25 <b>result</b> [2] - 222:16, 265:3 <b>results</b> [1] - 244:17 <b>resume</b> [1] - 289:21 <b>resumes</b> [2] - 217:19, 287:4 <b>retire</b> [2] - 262:2, 280:10 <b>retrieve</b> [1] - 243:21 <b>return</b> [6] - 234:21, 251:5, 274:15, 281:18, 281:25, 286:19 <b>returning</b> [1] - 282:13 <b>reunion</b> [3] - 254:9, 254:10, 254:17 <b>reunions</b> [1] - 254:13 <b>reveal</b> [1] - 281:3 <b>reversible</b> [1] - 211:19 <b>review</b> [4] - 284:9, 284:15, 284:16 <b>reviewing</b> [1] - 272:12 <b>revised</b> [1] - 207:5 <b>rid</b> [2] - 230:9, 251:4 <b>riddled</b> [1] - 237:15
<b>R</b>		
<b>race</b> [1] - 264:1 <b>raise</b> [2] - 242:25, 284:23 <b>raised</b> [2] - 242:24, 255:20 <b>Rarely</b> [1] - 269:12 <b>reach</b> [1] - 251:19 <b>reached</b> [4] - 280:7, 281:4, 281:15, 285:16 <b>reaching</b> [4] - 263:24, 272:22, 274:5, 282:4 <b>read</b> [3] - 210:21, 216:22, 284:12 <b>readily</b> [3] - 244:21, 245:21, 277:20 <b>reading</b> [1] - 261:13 <b>reads</b> [1] - 274:25 <b>Ready</b> [1] - 217:20 <b>ready</b> [6] - 205:6, 205:7, 205:8, 250:7, 250:12 <b>real</b> [1] - 246:4 <b>realizes</b> [1] - 260:8 <b>really</b> [5] - 250:9, 250:12, 252:14, 287:19 <b>Realtime</b> [1] - 291:15 <b>rear</b> [1] - 232:12 <b>reason</b> [7] - 209:1, 246:6, 265:6, 266:12, 268:6, 273:8 <b>reasonable</b> [35] - 211:15, 229:1, 234:16, 234:19, 237:9, 242:22, 255:18, 260:17, 260:23, 262:11, 265:5, 265:14, 265:18, 266:1, 266:19, 267:19, 269:2, 269:7, 269:23, 271:17, 273:23, 274:6, 276:5, 276:11, 276:15, 277:16, 278:23, 280:2, 285:18, 287:7, 287:15, 288:8, 288:23, 289:8, 289:10 <b>reasoned</b> [2] - 268:10, 269:5 <b>reasons</b> [1] - 272:25 <b>Rebuttal</b> [1] - 226:4 <b>rebuttal</b> [4] - 225:23, 226:24, 283:4, 283:7 <b>REBUTTAL</b> [1] - 292:14 <b>recalled</b> [1] - 259:22 <b>received</b> [7] - 205:11, 262:21, 267:7, 267:10, 267:11, 288:4, 288:22		

<p><b>ridiculous</b> [1] - 245:16</p> <p><b>rights</b> [4] - 233:2, 276:9, 276:19, 277:4</p> <p><b>rise</b> [5] - 205:2, 217:15, 217:18, 287:3, 290:20</p> <p><b>RMR</b> [2] - 204:23, 291:20</p> <p><b>Road</b> [1] - 223:13</p> <p><b>role</b> [3] - 275:16, 286:22, 289:5</p> <p><b>roll</b> [1] - 281:19</p> <p><b>Ron</b> [5] - 217:22, 284:7, 284:17, 286:1, 291:2</p> <p><b>Room</b> [1] - 204:23</p> <p><b>room</b> [6] - 238:18, 262:3, 271:25, 280:10, 280:25, 289:7</p> <p><b>row</b> [2] - 286:4, 286:5</p> <p><b>rule</b> [2] - 262:4, 266:16</p> <p><b>ruling</b> [1] - 263:11</p> <p><b>rulings</b> [2] - 263:6, 263:12</p> <p><b>run</b> [3] - 230:10, 253:16</p> <p><b>running</b> [8] - 239:23, 240:14, 243:23, 249:7, 249:22, 250:5, 250:11, 250:15</p>	<p>250:9, 250:21, 251:25, 253:8, 253:9, 253:12, 253:19, 255:25, 256:4, 256:6, 271:3, 283:22, 285:4, 285:23, 285:24</p> <p><b>See</b> [1] - 290:17</p> <p><b>seeing</b> [6] - 220:1, 230:6, 230:21, 239:13, 255:14, 255:15</p> <p><b>Seeing</b> [1] - 230:10</p> <p><b>seem</b> [2] - 237:17, 237:23</p> <p><b>sees</b> [11] - 230:12, 239:21, 241:11, 241:12, 248:17, 249:21, 255:13, 258:3, 260:1, 260:8, 266:8</p> <p><b>Segreti</b> [7] - 218:4, 218:9, 219:1, 220:17, 222:13, 223:4, 224:24</p> <p><b>SEGRETI</b> [2] - 218:5, 292:10</p> <p><b>seizure</b> [1] - 243:15</p> <p><b>select</b> [1] - 280:10</p> <p><b>semi</b> [1] - 275:6</p> <p><b>semi-automatic</b> [1] - 275:6</p> <p><b>send</b> [1] - 280:14</p> <p><b>sending</b> [2] - 285:21, 291:1</p> <p><b>sending-out</b> [1] - 291:1</p> <p><b>sense</b> [22] - 236:7, 241:19, 253:1, 253:12, 253:22, 257:15, 258:21, 266:12, 267:19, 268:7, 268:24, 270:8, 270:21, 273:8, 279:23, 280:6, 288:5, 289:6, 289:9, 289:16, 290:15</p> <p><b>senses</b> [1] - 266:8</p> <p><b>sensical</b> [1] - 234:10</p> <p><b>sentence</b> [3] - 214:12, 216:2, 279:25</p> <p><b>sentences</b> [1] - 210:12</p> <p><b>SEPTEMBER</b> [2] - 205:1, 292:3</p> <p><b>September</b> [1] - 204:9</p> <p><b>series</b> [2] - 269:18, 275:14</p> <p><b>serious</b> [1] - 264:13</p> <p><b>Serious</b> [1] - 223:19</p> <p><b>serve</b> [2] - 222:13, 286:13</p> <p><b>service</b> [1] - 285:7</p> <p><b>services</b> [1] - 285:6</p> <p><b>serving</b> [2] - 214:12, 216:2</p> <p><b>session</b> [3] - 205:3, 217:19, 287:4</p> <p><b>set</b> [4] - 207:5, 248:11, 268:14, 277:16</p> <p><b>sets</b> [2] - 285:19</p> <p><b>settle</b> [1] - 243:16</p> <p><b>Seventeen</b> [1] - 208:18</p> <p><b>sex</b> [1] - 264:1</p> <p><b>shadows</b> [11] - 236:4, 238:3, 239:6, 248:18, 248:19, 248:23, 248:24, 249:1, 249:3, 249:7, 249:23</p> <p><b>shifts</b> [2] - 265:5, 271:19</p> <p><b>shipped</b> [3] - 274:24, 275:22, 276:2</p> <p><b>shoot</b> [5] - 250:5, 250:7, 257:11</p> <p><b>short</b> [1] - 281:10</p> <p><b>shortcut</b> [1] - 251:18</p> <p><b>shot</b> [2] - 250:8, 250:10</p> <p><b>should've</b> [1] - 246:9</p> <p><b>shouting</b> [2] - 231:25, 241:10</p> <p><b>show</b> [9] - 233:23, 234:1, 234:2, 235:12, 235:14, 244:14, 246:11, 251:6, 263:8</p> <p><b>showed</b> [1] - 232:15</p>	<p><b>shown</b> [2] - 228:24, 269:17</p> <p><b>side</b> [11] - 210:25, 220:25, 252:3, 252:25, 255:2, 260:4, 263:2, 263:3, 270:1, 270:12</p> <p><b>signature</b> [1] - 281:13</p> <p><b>signed</b> [4] - 280:15, 280:17, 284:17, 288:25</p> <p><b>significance</b> [1] - 271:21</p> <p><b>significant</b> [3] - 223:25, 255:11, 275:10</p> <p><b>similarity</b> [1] - 274:20</p> <p><b>simple</b> [1] - 265:6</p> <p><b>simplest</b> [1] - 245:20</p> <p><b>simply</b> [8] - 236:17, 241:12, 250:21, 251:7, 260:25, 266:18, 267:3, 283:12</p> <p><b>single</b> [2] - 255:9, 261:25</p> <p><b>sit</b> [1] - 244:14</p> <p><b>sitting</b> [7] - 229:21, 230:2, 230:3, 230:21, 247:4, 248:18, 248:23</p> <p><b>Sixteen</b> [1] - 208:14</p> <p><b>skill</b> [1] - 272:19</p> <p><b>skip</b> [1] - 247:3</p> <p><b>skipped</b> [1] - 247:2</p> <p><b>slash</b> [1] - 214:25</p> <p><b>slate</b> [1] - 265:16</p> <p><b>sleep</b> [1] - 290:5</p> <p><b>slightly</b> [2] - 255:6</p> <p><b>slowly</b> [1] - 261:9</p> <p><b>small</b> [1] - 285:6</p> <p><b>smelling</b> [1] - 231:1</p> <p><b>sneezed</b> [2] - 256:6, 257:3</p> <p><b>society</b> [1] - 236:12</p> <p><b>soften</b> [1] - 252:6</p> <p><b>sold</b> [2] - 247:13, 247:14</p> <p><b>sole</b> [6] - 262:8, 262:24, 263:14, 270:20, 278:6, 278:8</p> <p><b>solely</b> [4] - 273:10, 274:13, 280:2, 282:12</p> <p><b>solo</b> [1] - 286:23</p> <p><b>someone</b> [10] - 224:14, 224:18, 244:7, 247:16, 247:17, 249:15, 257:6, 272:21, 289:10</p> <p><b>Sometimes</b> [2] - 224:20, 224:21</p> <p><b>somewhat</b> [1] - 258:11</p> <p><b>Somewhat</b> [2] - 224:6, 224:7</p> <p><b>somewhere</b> [5] - 230:9, 239:11, 240:6, 247:19, 257:23</p> <p><b>sorry</b> [1] - 282:21</p> <p><b>sort</b> [7] - 229:12, 229:19, 230:23, 231:18, 256:8, 287:18, 289:13</p> <p><b>source</b> [1] - 239:2</p> <p><b>south</b> [1] - 220:25</p> <p><b>Special</b> [1] - 204:19</p> <p><b>special</b> [2] - 272:19, 289:16</p> <p><b>specialized</b> [1] - 289:13</p> <p><b>specific</b> [3] - 273:13, 273:19, 274:19</p> <p><b>Specifically</b> [1] - 221:9</p> <p><b>speculate</b> [1] - 277:10</p> <p><b>speculation</b> [2] - 246:9, 268:19</p> <p><b>spend</b> [1] - 233:3</p>
<b>S</b>		
<p><b>Sacca</b> [1] - 285:1</p> <p><b>safety</b> [2] - 246:8, 250:10</p> <p><b>salts</b> [1] - 231:1</p> <p><b>Sands</b> [1] - 283:14</p> <p><b>satisfied</b> [3] - 265:13, 266:19, 269:6</p> <p><b>satisfy</b> [1] - 278:15</p> <p><b>Saw</b> [1] - 260:13</p> <p><b>saw</b> [55] - 212:17, 228:18, 228:20, 229:20, 229:25, 231:12, 231:22, 232:14, 232:15, 233:9, 234:17, 236:2, 236:3, 237:13, 238:20, 239:4, 240:7, 240:12, 240:16, 240:17, 240:22, 244:8, 248:7, 248:15, 249:6, 252:2, 253:3, 253:4, 253:6, 253:8, 253:9, 253:11, 253:15, 253:16, 253:20, 253:21, 254:21, 256:1, 256:5, 257:1, 257:4, 257:6, 257:11, 259:4, 259:7, 259:23, 260:3, 260:13, 266:5</p> <p><b>scattered</b> [1] - 239:17</p> <p><b>scene</b> [4] - 243:8, 243:16, 244:24, 249:25</p> <p><b>score</b> [1] - 251:9</p> <p><b>screaming</b> [2] - 231:25, 259:20</p> <p><b>search</b> [1] - 239:15</p> <p><b>seated</b> [4] - 205:5, 217:25, 287:5, 288:22</p> <p><b>second</b> [4] - 233:7, 233:20, 276:10, 277:15</p> <p><b>seconds</b> [5] - 232:7, 243:10, 255:16, 260:12, 260:15</p> <p><b>secured</b> [1] - 250:13</p> <p><b>security</b> [1] - 285:1</p> <p><b>see</b> [37] - 209:1, 217:23, 231:20, 231:21, 231:22, 232:5, 232:12, 236:24, 240:10, 241:4, 241:12, 242:3, 242:15, 244:5, 244:17, 245:4, 245:6, 249:1,</p>		



<p><b>split</b> [1] - 239:18</p> <p><b>spokesperson</b> [1] - 280:12</p> <p><b>Squad</b> [8] - 235:10, 235:11, 237:10, 237:12, 241:15, 243:14, 246:14, 248:6</p> <p><b>stand</b> [6] - 229:7, 235:24, 264:19, 271:2, 271:23, 281:3</p> <p><b>standing</b> [7] - 229:22, 229:24, 241:4, 254:19, 258:14, 258:17, 260:10</p> <p><b>stands</b> [4] - 217:16, 287:1, 290:21, 291:9</p> <p><b>start</b> [4] - 228:9, 230:23, 261:11, 290:25</p> <p><b>started</b> [2] - 260:19, 260:21</p> <p><b>starting</b> [1] - 291:8</p> <p><b>starts</b> [2] - 230:10, 230:22</p> <p><b>stash</b> [7] - 224:8, 224:11, 224:18, 257:20, 257:21, 258:1, 258:2</p> <p><b>Stashes</b> [1] - 224:12</p> <p><b>State</b> [7] - 233:1, 275:12, 275:15, 276:8, 276:18, 277:3, 284:25</p> <p><b>state</b> [14] - 234:3, 234:8, 234:9, 234:13, 243:12, 247:11, 247:12, 262:4, 269:9, 269:12, 279:6, 279:7, 279:13, 279:14</p> <p><b>statement</b> [3] - 266:24, 266:25, 267:1</p> <p><b>statements</b> [3] - 262:15, 267:16, 271:10</p> <p><b>STATES</b> [3] - 204:1, 204:4, 292:2</p> <p><b>States</b> [5] - 205:2, 219:2, 246:20, 264:15, 275:11</p> <p><b>states</b> [1] - 210:22</p> <p><b>stating</b> [1] - 262:1</p> <p><b>statistics</b> [1] - 245:17</p> <p><b>Step</b> [1] - 228:1</p> <p><b>step</b> [6] - 225:5, 239:1, 239:13, 248:18, 249:2, 249:3</p> <p><b>steps</b> [16] - 229:21, 229:23, 229:24, 230:3, 238:8, 238:11, 238:12, 239:7, 240:9, 249:8, 249:12, 250:6, 253:15, 254:22, 260:1, 260:11</p> <p><b>Steven</b> [1] - 204:14</p> <p><b>still</b> [3] - 287:7, 287:11, 288:24</p> <p><b>stipulated</b> [3] - 233:5, 276:23, 277:3</p> <p><b>stipulation</b> [3] - 215:23, 267:25</p> <p><b>stipulations</b> [2] - 262:22, 267:8</p> <p><b>stole</b> [1] - 247:17</p> <p><b>stop</b> [3] - 243:23, 243:25, 290:1</p> <p><b>stopped</b> [3] - 229:12, 250:13, 250:15</p> <p><b>stories</b> [1] - 253:24</p> <p><b>story</b> [5] - 239:20, 251:15, 254:19, 254:24, 255:10</p> <p><b>straight</b> [1] - 255:1</p> <p><b>street</b> [22] - 220:25, 229:23, 230:7, 231:15, 232:11, 235:19, 236:9, 236:13, 236:19, 238:22, 239:21, 240:10, 240:13, 240:14, 241:1, 243:20, 243:22, 249:14, 251:16, 252:22, 252:25</p> <p><b>Street</b> [10] - 204:24, 220:10, 220:18, 220:25, 223:5, 229:10, 234:12, 247:22, 248:8</p> <p><b>streets</b> [3] - 246:2, 246:13, 246:15</p> <p><b>stretch</b> [1] - 252:21</p>	<p><b>stricken</b> [1] - 267:14</p> <p><b>strip</b> [2] - 223:12, 223:13</p> <p><b>stuck</b> [1] - 226:13</p> <p><b>stuff</b> [1] - 250:25</p> <p><b>subject</b> [3] - 210:15, 274:17, 280:18</p> <p><b>submit</b> [16] - 236:4, 237:16, 241:20, 242:5, 242:16, 244:10, 245:15, 245:18, 247:19, 248:1, 248:16, 249:6, 250:8, 250:24, 251:6, 255:7</p> <p><b>submitted</b> [1] - 209:20</p> <p><b>subpoena</b> [1] - 222:14</p> <p><b>subsequently</b> [1] - 222:25</p> <p><b>substantial</b> [1] - 274:20</p> <p><b>substitute</b> [1] - 273:8</p> <p><b>sudden</b> [1] - 254:10</p> <p><b>suddenly</b> [2] - 230:22, 231:2</p> <p><b>Suddenly</b> [1] - 231:2</p> <p><b>Suffice</b> [1] - 231:6</p> <p><b>sufficient</b> [4] - 233:25, 234:2, 265:16, 279:3</p> <p><b>suggest</b> [1] - 289:18</p> <p><b>suggested</b> [3] - 252:10, 252:13, 256:7</p> <p><b>suggesting</b> [1] - 252:11</p> <p><b>Suiter</b> [18] - 229:17, 231:7, 231:13, 231:14, 239:10, 239:12, 240:2, 240:4, 240:6, 240:8, 240:10, 240:12, 240:15, 240:22, 252:12, 253:4, 255:13, 260:14</p> <p><b>Super</b> [2] - 241:25, 245:21</p> <p><b>supplied</b> [1] - 219:13</p> <p><b>support</b> [2] - 236:5, 275:14</p> <p><b>supported</b> [1] - 271:7</p> <p><b>supposedly</b> [5] - 236:1, 240:9, 241:22, 244:6, 245:7</p> <p><b>Supposedly</b> [1] - 244:7</p> <p><b>suppressing</b> [2] - 235:13, 235:14</p> <p><b>surprised</b> [3] - 217:23, 222:8, 285:4</p> <p><b>surrender</b> [1] - 282:11</p> <p><b>surrounding</b> [1] - 269:21</p> <p><b>surroundings</b> [1] - 258:8</p> <p><b>suspect</b> [3] - 231:9, 239:24, 260:3</p> <p><b>suspected</b> [4] - 240:1, 242:19, 250:20, 251:13</p> <p><b>suspicion</b> [1] - 268:9</p> <p><b>sustain</b> [2] - 265:20, 276:5</p> <p><b>Sustained</b> [4] - 221:21, 222:6, 222:11, 222:21</p> <p><b>swab</b> [1] - 244:20</p> <p><b>swabbing</b> [1] - 244:23</p> <p><b>swabs</b> [1] - 244:22</p> <p><b>swayed</b> [1] - 246:1</p> <p><b>swear</b> [1] - 284:22</p> <p><b>SWORN</b> [1] - 218:6</p> <p><b>sworn</b> [3] - 238:6, 267:6, 284:24</p> <p><b>Sworn</b>..... [1] - 292:10</p> <p><b>sympathy</b> [1] - 263:18</p>	<p style="text-align: center;"><b>T</b></p> <p><b>tackle</b> [1] - 250:1</p> <p><b>tag</b> [1] - 246:17</p> <p><b>tale</b> [2] - 237:4, 237:10</p> <p><b>technical</b> [3] - 289:16, 289:17, 290:14</p> <p><b>technique</b> [1] - 273:19</p> <p><b>techniques</b> [4] - 244:18, 256:9, 273:13, 273:20</p> <p><b>technology</b> [2] - 244:16, 244:18</p> <p><b>television</b> [1] - 244:13</p> <p><b>TELL</b> [1] - 218:6</p> <p><b>temperature</b> [1] - 280:25</p> <p><b>tempt</b> [1] - 211:18</p> <p><b>Ten</b> [2] - 216:7, 216:8</p> <p><b>ten</b> [5] - 213:19, 218:20, 249:8, 250:6, 284:9</p> <p><b>ten-year</b> [1] - 213:19</p> <p><b>tend</b> [1] - 254:13</p> <p><b>tendered</b> [4] - 211:8, 212:1, 212:20, 212:22</p> <p><b>tends</b> [1] - 266:10</p> <p><b>term</b> [5] - 233:1, 275:4, 276:8, 276:18, 276:25</p> <p><b>terms</b> [5] - 231:8, 233:10, 252:13, 289:14, 289:17</p> <p><b>terrifying</b> [2] - 245:23, 245:25</p> <p><b>test</b> [4] - 233:17, 242:2, 242:3, 242:17</p> <p><b>tested</b> [2] - 242:5, 252:14</p> <p><b>testified</b> [6] - 229:8, 229:20, 238:10, 240:2, 244:21, 270:25</p> <p><b>testifies</b> [5] - 239:9, 240:24, 266:5, 266:6, 270:19</p> <p><b>testify</b> [13] - 207:3, 216:14, 216:15, 227:5, 227:9, 238:7, 245:12, 271:14, 271:15, 271:22, 272:18, 273:7</p> <p><b>testifying</b> [4] - 207:9, 216:13, 271:2, 273:1</p> <p><b>testimony</b> [49] - 211:1, 229:3, 229:6, 235:23, 237:3, 237:15, 237:24, 238:4, 238:6, 238:13, 240:21, 249:5, 252:3, 253:24, 254:1, 254:3, 256:10, 257:17, 259:1, 259:22, 261:17, 262:19, 263:3, 267:7, 267:13, 270:3, 270:20, 270:23, 271:3, 271:7, 271:9, 271:12, 271:13, 272:1, 272:4, 272:9, 272:13, 272:14, 272:20, 272:24, 273:3, 273:4, 273:6, 273:11, 274:22, 283:17, 283:18, 283:23</p> <p><b>testing</b> [2] - 245:4, 257:10</p> <p><b>tests</b> [1] - 257:9</p> <p><b>THE</b> [187] - 204:1, 204:1, 205:2, 205:5, 205:7, 205:9, 205:15, 205:18, 205:21, 205:23, 205:25, 206:2, 206:4, 206:6, 206:8, 206:10, 206:12, 206:14, 206:16, 206:18, 206:20, 206:22, 206:24, 207:1, 207:7, 207:12, 207:15, 207:18, 207:21, 207:23, 207:25, 208:2, 208:4, 208:6, 208:8, 208:10,</p>
--	--	--

<p>208:12, 208:14, 208:16, 208:18, 208:20, 208:23, 208:25, 209:4, 209:6, 209:8, 209:10, 209:12, 209:14, 209:16, 209:18, 209:23, 210:1, 210:4, 210:6, 210:15, 210:21, 211:3, 211:5, 211:9, 211:12, 211:18, 211:22, 211:24, 212:2, 212:5, 212:9, 212:12, 212:16, 212:19, 213:1, 213:7, 213:9, 213:13, 213:15, 213:18, 213:22, 214:3, 214:6, 214:8, 214:10, 214:17, 214:21, 215:3, 215:7, 215:10, 215:14, 215:18, 216:5, 216:8, 216:11, 216:20, 216:24, 217:4, 217:7, 217:10, 217:12, 217:14, 217:15, 217:18, 217:20, 217:22, 217:25, 218:6, 220:14, 221:11, 221:13, 221:21, 222:6, 222:11, 222:21, 225:1, 225:5, 225:6, 225:8, 225:10, 225:13, 225:16, 225:19, 225:22, 225:25, 226:2, 226:4, 226:6, 226:10, 226:12, 226:16, 226:18, 226:20, 226:22, 226:24, 227:2, 227:5, 227:7, 227:11, 227:20, 227:22, 227:24, 228:1, 228:3, 234:24, 249:19, 251:22, 256:20, 258:22, 261:3, 261:6, 282:20, 282:22, 282:24, 283:2, 283:8, 283:11, 283:19, 284:4, 284:7, 284:19, 284:22, 284:23, 284:25, 285:2, 285:10, 286:15, 286:20, 286:23, 286:25, 287:1, 287:3, 287:5, 287:16, 287:21, 288:3, 288:16, 288:19, 288:22, 290:20, 290:22, 290:24, 291:5, 291:7, 291:9, 292:9, 292:12, 292:13, 292:14, 292:15, 292:17</p> <p><b>THEN</b> [1] - 218:6</p> <p><b>theory</b> [1] - 272:20</p> <p><b>therefore</b> [2] - 239:12, 265:10</p> <p><b>thinks</b> [3] - 230:11, 236:2, 248:15</p> <p><b>third</b> [4] - 233:21, 234:14, 276:12, 278:22</p> <p><b>thoughts</b> [2] - 287:10, 287:11</p> <p><b>three</b> [9] - 229:9, 232:24, 235:10, 237:4, 237:11, 254:17, 254:24, 255:5, 289:23</p> <p><b>Three</b> [1] - 234:15</p> <p><b>threw</b> [3] - 244:7, 249:13, 250:12</p> <p><b>throughout</b> [2] - 265:11, 271:18</p> <p><b>throw</b> [2] - 236:2, 250:25</p> <p><b>thrown</b> [3] - 239:21, 243:22, 244:11</p> <p><b>timely</b> [1] - 213:13</p> <p><b>title</b> [1] - 219:17</p> <p><b>TO</b> [2] - 218:6, 292:15</p> <p><b>today</b> [7] - 222:23, 235:17, 235:18, 237:7, 248:4, 285:5, 286:19</p> <p><b>together</b> [6] - 252:18, 252:19, 252:23, 289:22, 289:25, 290:4</p> <p><b>token</b> [4] - 211:1, 264:17, 270:2, 285:6</p> <p><b>Tomorrow</b> [1] - 291:7</p> <p><b>tomorrow</b> [7] - 285:17, 289:20, 290:6, 290:17, 290:21, 291:1, 291:10</p> <p><b>tonight</b> [1] - 290:5</p>	<p><b>took</b> [3] - 233:15, 235:13, 269:22</p> <p><b>top</b> [1] - 240:25</p> <p><b>toss</b> [7] - 230:13, 252:1, 252:2, 253:4, 253:16, 253:20, 256:1</p> <p><b>tossed</b> [1] - 255:16</p> <p><b>tosses</b> [2] - 258:3, 260:11</p> <p><b>totality</b> [1] - 237:24</p> <p><b>touch</b> [2] - 286:2, 291:2</p> <p><b>touched</b> [1] - 257:4</p> <p><b>touches</b> [1] - 266:8</p> <p><b>touching</b> [2] - 280:19, 280:23</p> <p><b>toward</b> [1] - 253:16</p> <p><b>towards</b> [4] - 248:24, 249:22, 250:6, 250:11</p> <p><b>trail</b> [4] - 247:18, 247:20, 259:9</p> <p><b>trained</b> [1] - 243:12</p> <p><b>training</b> [1] - 272:20</p> <p><b>transcript</b> [1] - 291:16</p> <p><b>transmit</b> [1] - 281:7</p> <p><b>transported</b> [1] - 279:9</p> <p><b>travel</b> [1] - 234:13</p> <p><b>traveled</b> [4] - 233:25, 279:3, 279:11, 279:16</p> <p><b>treatise</b> [1] - 283:13</p> <p><b>treatment</b> [1] - 240:20</p> <p><b>tree</b> [1] - 240:2</p> <p><b>TRIAL</b> [1] - 292:3</p> <p><b>trial</b> [11] - 204:10, 217:2, 258:18, 260:20, 262:17, 263:22, 265:15, 265:23, 268:3, 271:19, 273:11</p> <p><b>tried</b> [5] - 250:22, 252:6, 258:1, 286:16</p> <p><b>tries</b> [1] - 230:14</p> <p><b>true</b> [8] - 249:12, 266:24, 266:25, 267:2, 267:3, 268:1, 268:2, 270:6</p> <p><b>trust</b> [1] - 290:11</p> <p><b>trusted</b> [1] - 289:15</p> <p><b>TRUTH</b> [1] - 218:6</p> <p><b>truth</b> [4] - 247:8, 252:21, 267:1, 271:5</p> <p><b>truthful</b> [2] - 252:11, 252:12</p> <p><b>try</b> [4] - 244:19, 261:15, 272:8, 290:9</p> <p><b>trying</b> [10] - 235:20, 236:15, 246:23, 247:23, 250:23, 250:25, 251:9, 251:15, 261:11, 283:9</p> <p><b>turn</b> [2] - 205:9, 273:25</p> <p><b>turned</b> [3] - 229:10, 232:10, 250:18</p> <p><b>turns</b> [2] - 231:19, 232:9</p> <p><b>Twenty</b> [3] - 209:1, 209:14, 209:18</p> <p><b>Twenty-one</b> [1] - 209:14</p> <p><b>Twenty-two</b> [1] - 209:18</p> <p><b>Two</b> [2] - 226:16, 226:20</p> <p><b>two</b> [19] - 209:18, 215:19, 215:21, 226:6, 229:19, 231:4, 239:6, 239:17, 243:4, 243:13, 248:20, 254:7, 254:16, 255:5, 255:9, 266:2, 283:5, 283:12, 289:23</p> <p><b>type</b> [5] - 223:15, 240:17, 249:9, 256:25, 266:4</p> <p><b>types</b> [3] - 256:12, 266:2, 283:18</p>	<p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> [3] - 204:14, 204:14, 204:23</p> <p><b>ultimately</b> [1] - 240:13</p> <p><b>unanimous</b> [2] - 281:4, 282:2</p> <p><b>unanimously</b> [1] - 265:17</p> <p><b>unarmed</b> [2] - 239:23, 243:23</p> <p><b>unclearness</b> [1] - 207:10</p> <p><b>unconsciousness</b> [1] - 243:15</p> <p><b>under</b> [13] - 222:9, 228:20, 232:5, 232:6, 232:8, 244:9, 255:16, 258:2, 258:3, 260:13, 270:24, 278:12</p> <p><b>Under</b> [2] - 271:14, 280:3</p> <p><b>underhanded</b> [1] - 244:7</p> <p><b>underneath</b> [2] - 228:22, 232:12</p> <p><b>understatement</b> [1] - 287:16</p> <p><b>undisputed</b> [1] - 243:6</p> <p><b>unfair</b> [1] - 246:8</p> <p><b>unfavorably</b> [1] - 287:14</p> <p><b>unfortunately</b> [3] - 235:15, 247:3, 247:4</p> <p><b>uniform</b> [1] - 230:4</p> <p><b>Unit</b> [1] - 218:25</p> <p><b>unit</b> [1] - 249:16</p> <p><b>United</b> [5] - 205:2, 219:2, 246:20, 264:15, 275:11</p> <p><b>UNITED</b> [3] - 204:1, 204:4, 292:2</p> <p><b>unlawfully</b> [1] - 275:4</p> <p><b>unless</b> [3] - 216:25, 265:17, 265:25</p> <p><b>unsure</b> [2] - 238:23, 241:9</p> <p><b>unusual</b> [1] - 289:12</p> <p><b>up</b> [24] - 211:3, 211:25, 226:14, 229:11, 230:4, 230:21, 239:23, 240:12, 240:14, 240:24, 240:25, 241:20, 241:23, 243:20, 248:7, 248:11, 248:12, 249:14, 252:6, 254:11, 255:9, 255:15, 260:7, 289:21</p> <p><b>users</b> [2] - 239:24, 248:12</p> <p><b>uses</b> [1] - 242:1</p> <p><b>uttered</b> [1] - 269:19</p> <p style="text-align: center;"><b>V</b></p> <p><b>value</b> [2] - 215:19, 266:15</p> <p><b>Vargas</b> [8] - 229:14, 237:6, 240:25, 243:20, 243:22, 244:1, 250:14, 256:16</p> <p><b>variances</b> [3] - 253:24, 254:6, 255:17</p> <p><b>varied</b> [1] - 256:8</p> <p><b>various</b> [1] - 272:1</p> <p><b>vehicle</b> [2] - 224:21, 241:7</p> <p><b>Vehicle</b> [1] - 219:13</p> <p><b>verdict</b> [24] - 212:12, 234:21, 234:22, 251:5, 260:25, 262:6, 263:1, 263:21, 264:8, 264:21, 274:15, 280:5, 281:5, 281:9, 281:15, 281:17, 281:20, 281:22, 281:24, 281:25, 282:1, 282:13, 284:16, 285:16</p> <p><b>verdicts</b> [1] - 256:21</p> <p><b>version</b> [2] - 237:10, 241:20</p>
---	--	--

<b>versions</b> [2] - 239:18, 243:4 <b>versus</b> [1] - 219:2 <b>vicinity</b> [2] - 224:19, 247:24 <b>view</b> [2] - 275:8, 282:4 <b>views</b> [1] - 282:9 <b>violated</b> [1] - 214:16 <b>violation</b> [2] - 214:13, 275:18 <b>violence</b> [3] - 236:8, 246:16, 275:16 <b>violent</b> [1] - 275:10 <b>virtue</b> [1] - 266:7 <b>voir</b> [1] - 244:2 <b>Volume</b> [1] - 204:6 <b>VOLUME</b> [1] - 292:3 <b>voluntarily</b> [1] - 278:17 <b>vulnerable</b> [1] - 246:22	272:9, 272:14, 272:18, 273:7, 283:20 <b>WITNESS</b> [1] - 225:6 <b>Witness</b> [3] - 219:12, 225:7, 292:11 <b>witness'</b> [9] - 271:1, 271:2, 271:4, 271:6, 271:7, 271:9, 272:25, 273:3, 283:22 <b>WITNESSES</b> [1] - 292:8 <b>witnesses</b> [18] - 210:23, 210:25, 216:3, 236:1, 262:10, 262:20, 263:16, 267:7, 269:24, 270:2, 270:5, 270:10, 270:11, 270:12, 270:14, 270:17, 272:16, 273:12 <b>witnesses'</b> [1] - 267:15 <b>word</b> [2] - 268:4, 278:19 <b>words</b> [8] - 227:9, 266:6, 269:14, 269:18, 282:1, 289:12 <b>world</b> [1] - 248:23 <b>worth</b> [1] - 283:15 <b>would've</b> [1] - 246:9 <b>Wright</b> [1] - 205:11 <b>writing</b> [2] - 280:17, 280:19 <b>wrote</b> [1] - 237:21
<b>W</b>	<b>X</b>
<b>walk</b> [8] - 230:14, 231:5, 239:12, 248:24, 249:2, 249:3, 250:22, 289:25 <b>walked</b> [9] - 229:15, 229:16, 229:18, 230:5, 232:1, 239:7, 239:10, 240:8, 248:20 <b>walking</b> [8] - 230:16, 240:10, 240:12, 240:13, 240:14, 249:7, 249:22, 250:15 <b>wall</b> [2] - 235:14, 241:14 <b>wants</b> [5] - 256:11, 256:13, 256:23, 286:2, 286:5 <b>warm</b> [1] - 250:18 <b>warning</b> [3] - 226:7, 226:16, 226:18 <b>WAS</b> [1] - 218:6 <b>watch</b> [2] - 228:13, 235:1 <b>WDQ-07-0470</b> [1] - 204:6 <b>weapon</b> [11] - 230:17, 241:13, 243:24, 244:5, 249:24, 251:12, 274:24, 277:2, 277:19, 278:18 <b>week</b> [1] - 244:24 <b>weigh</b> [2] - 279:25, 286:3 <b>weighing</b> [1] - 272:24 <b>weight</b> [8] - 262:9, 263:14, 263:16, 272:5, 272:14, 273:4, 282:11, 283:18 <b>West</b> [1] - 204:24 <b>whatsoever</b> [1] - 247:10 <b>whole</b> [1] - 262:2 <b>willfulness</b> [2] - 269:9, 269:20 <b>William</b> [2] - 204:11, 205:4 <b>willing</b> [7] - 252:16, 252:17, 252:18, 252:20, 252:21, 252:22, 252:23 <b>window</b> [1] - 213:19 <b>wipe</b> [1] - 245:3 <b>wiped</b> [2] - 245:8, 245:12 <b>wisdom</b> [4] - 262:4, 275:17, 290:12, 290:14 <b>wish</b> [4] - 214:17, 214:19, 243:2, 247:7 <b>witness</b> [29] - 211:2, 211:10, 216:9, 217:23, 235:24, 244:3, 265:7, 266:5, 266:6, 266:25, 270:3, 270:4, 270:19, 270:22, 270:24, 271:5, 271:10, 271:11, 271:13, 271:23, 272:2, 272:6,	<b>Y</b>
	<b>xerox</b> [1] - 261:15
	<b>year</b> [7] - 213:19, 233:1, 275:4, 276:3, 276:8, 276:18, 276:25 <b>years</b> [7] - 218:20, 218:23, 218:24, 254:7, 254:16, 255:5, 255:10 <b>yelling</b> [2] - 231:18, 241:10 <b>yesterday</b> [4] - 222:17, 229:4, 232:23, 237:7 <b>yourself</b> [2] - 254:8, 282:6